

## **Title 12**

### **ETHICS PROVISIONS**

#### **Chapters:**

- 12.02 General Provisions and Definitions**
- 12.04 San José Elections Commission**
- 12.05 Elections**
- 12.06 Municipal Campaign and Officeholder Contributions**
- 12.08 Prohibition of Gifts**
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## **SAN JOSE CODE**

**Chapter 12.02****GENERAL PROVISIONS AND DEFINITIONS****Sections:****12.02.010 Intent.****12.02.020 Words and phrases.****12.02.030 Client.****12.02.040 Contractor.****12.02.050 Designated employees.****12.02.060 Reserved.****12.02.070 Governmental action.****12.02.080 Payment.****12.02.090 Person doing business with the city.****12.02.100 Public official.****12.02.010 Intent.**

- A. This title is intended to implement Charter Section 607. It is a compilation of all city ordinances which directly regulate campaign conduct and ethics.
- B. This title is intended to apply equally to the redevelopment agency of the City of San José and to any joint powers or other subsidiary agency of the city.
- C. The provisions of this title are supplemented by city policies and administrative regulations. They are in addition to all applicable state and federal laws.
- D. All city officials, including candidates for city office, members of all city and agency boards, commissions and committees, all city and agency employees and all persons doing business with the city or agency are expected to fully comply with all applicable provisions of this title as well as all other city ethics policies and regulations.

(Ords. 24499, 26440.)

**12.02.020 Words and phrases.**

Words and phrases used in this title shall have the meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

(Ords. 24499, 26440.)

**12.02.030 Client.**

- A. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed.
- B. An individual member of an organization shall not be deemed to be a "client", for purposes of this chapter, solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

(Ords. 24499, 26440.)

**12.02.040 Contractor.**

"Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars; and:

- A. The city is a party; or
- B. The redevelopment agency is a party; or
- C. The agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency.

(Ords. 24499, 26440.)

**12.02.050 Designated employees.**

"Designated employees" means city and redevelopment agency employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a San José or redevelopment agency conflict of interest code to file financial interest disclosure statements.

(Ords. 24499, 26440.)

**12.02.060 Reserved.**

**Editor's note:** Ord. No. 27291, adopted November 30, 2004, repealed § 12.02.060, which pertained to local governmental lobbyist.

**12.02.070 Governmental action.**

"Governmental action" means any administrative or legislative action of the City of San José and the redevelopment agency other than an action which is ministerial in nature.

(Ords. 24499, 26440.)

**12.02.080 Payment.**

“Payment” means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(Ords. 24499, 26440.)

**12.02.090 Person doing business with the city.**

A. “Person doing business with the city” means any person whose financial interests are materially affected by governmental action as defined by Section 12.02.070. It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years.

B. For purposes of this chapter, a person’s financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees.

(Ords. 24499, 26440.)

**12.02.100 Public official.**

“Public official” means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the state of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

(Ords. 24499, 26440.)

**Chapter 12.04****SAN JOSE ELECTIONS COMMISSION****Parts:**

- 1 Duties and Responsibilities**
- 2 Enforcement**

**Part 1****DUTIES AND RESPONSIBILITIES****Sections:**

- 12.04.025 San José Elections Commission.**
- 12.04.050 Meetings.**

**12.04.060 Quorum.****12.04.070 Duties and responsibilities.****12.04.080 Investigations.****12.04.085 Subpoena power.****12.04.025 San José Elections Commission.**

“San José Elections Commission”, also referred to in this title as “elections commission” or “commission” shall mean the established pursuant to the provisions of Part 16 of Chapter 2.08.

(Ords. 25209, 26440, 26976.)

**12.04.050 Meetings.**

A. The commission shall meet no less than two times during the year of a municipal election. At least one meeting shall be held before the primary election and one meeting shall be held before the general election.

B. The commission shall meet at other times as set forth in the resolution of bylaws of the commission or as called by the chair. Deliberations and meetings of the commission shall be open to the public in accordance with the Ralph M. Brown Act (Gov. Code, section 54950 et seq.)

C. The office of the city clerk shall staff such meetings.

(Ords. 24499, 25525, 26440, 26976.)

**12.04.060 Quorum.**

A. Three members constitute a quorum of the commission, and the votes of at least three members are required to take any action.

B. The votes of at least three members of the commission are required to impose any order or penalty for a violation of this title. Each member voting to impose any order or penalty for a violation of this title, must certify that he or she has heard (either in person or by listening to a recording) or has read a transcript of the testimony at the hearing on the complaint and has reviewed all the evidence in the record.

(Ords. 24499, 25525, 26440, 26976, 28624.)

**12.04.070 Duties and responsibilities.**

The commission shall have the following duties and responsibilities:

A. Monitor compliance with all campaign and ethics ordinances in this title.

B. Review and investigate allegations of violations of this title and take enforcement action where appropriate.

- C. Make recommendations to the city council with regard to campaign and ethics regulations and policies.
  - D. Settle challenges to commission decisions in accordance with Section 4.24.050 of Title 4 of this code.
- (Ords. 24499, 25525, 26440, 26976.)

#### **12.04.080 Investigations.**

- A. The city council shall adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the commission.
  - B. The commission has the authority to investigate complaints alleging violations of this title, in accordance with the regulations and procedures adopted by resolution of the city council.
  - C. A complaint filed with the commission may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation.
  - D. The council shall retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints and to make recommendations to the commission. The council shall appropriate funds anticipated to be needed to fund the evaluator for a period of two years.
  - E. No complaint, investigative file or information contained therein may be disclosed by a city official, city employee, the evaluator or investigator to any person other than a respondent or respondent's representative, the city attorney or district attorney, a court, a law enforcement agency or otherwise as necessary to the conduct of an investigation before the evaluator presents the report and recommendations to the commission.
  - F. Except as provided in this section, the evaluator must refer any complaint where the respondent is a classified or unclassified employee appointed by a city council appointee to the appointing authority for investigation and action. The elections commission must not take any further action on the complaint with regard to the employee.
  - G. Any city employee who is a candidate for city office must be treated as any other candidate for purposes of Chapter 12.06.
  - H. The city attorney's office may provide legal advice to the commission related to noncomplaint matters or general interpretations of the municipal code or relevant state or federal law, but must not participate in investigations or reviews of complaints.
- (Ords. 24499, 25525, 26440, 26976, 28624.)

#### **12.04.085 Subpoena power.**

- A. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items.
  - B. The chair of the commission, after consultation with the evaluator, shall have the power to subpoena witnesses and to compel their attendance and testimony, administer oaths and affirmations at a scheduled commission hearing or meeting, and to require by subpoena the production of any books, papers, records or other items.
  - C. The subpoena power shall be used only after a finding by the commission that the information or testimony is essential for a determination and material to its duties and/or exercise of its powers and that good faith efforts to acquire relevant information have failed.
- (Ords. 25525, 26440, 26976, 27339.)

### **Part 2**

### **ENFORCEMENT**

#### **Sections:**

- 12.04.100 Findings.**
- 12.04.110 Civil penalties.**
- 12.04.120 Campaign contribution violations.**
- 12.04.130 Excess contributions - Candidate.**
- 12.04.140 Excess contributions - Officeholder.**
- 12.04.150 Precandidacy contributions.**
- 12.04.160 Violations of this title.**
- 12.04.170 Subject to discipline.**
- 12.04.180 Additional sanctions - Revolving door violations.**

#### **12.04.100 Findings.**

- A. The commission, by resolution, shall issue formal findings based on a preponderance of the evidence from the entire record of the commission's proceedings.

- B. No finding of violation shall be made unless the person alleged to have committed the violation has been notified of the alleged violation and provided a copy of the regulations and procedures of the commission.
- C. If the elections commission finds a violation of this title, the commission may:
  1. Find mitigating circumstances and take no further action;
  2. Issue a public statement or reprimand; or
  3. Impose a civil penalty in accordance with this title.

(Ords. 24499, 25525, 26440, 26976.)

#### **12.04.110 Civil penalties.**

- A. Civil penalties shall be imposed by resolution of the commission.
- B. Except as otherwise specified in Title 12, the commission may impose penalties of up to five thousand dollars (\$5,000) for each violation or three times the amount which a person or respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.
- C. If any civil penalty imposed by the commission is not timely paid, the city clerk shall refer the debt to the director of finance for collection.

(Ords. 25525, 26440, 26976, 27291, 28213.)

#### **12.04.120 Campaign contribution violations.**

- A. In determining if penalties should be imposed for violations of Chapter 12.06 and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case, including:
  1. The severity of the violation;
  2. The presence or absence of any intention to conceal, deceive, or mislead;
  3. Whether the violation was deliberate, negligent or inadvertent;
  4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this chapter;
  5. Whether the respondent has a prior record of violations of city law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
  6. The degree to which the respondent cooperated with the investigation;
  7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this chapter.

- B. A candidate or committee failing to file a late contribution report pursuant to Section 12.06.910 shall be required to pay a penalty in an amount imposed by the commission pursuant to Section 12.04.110, but not less than one thousand dollars (\$1,000).
  - C. The city clerk or city attorney may put persons on notice of a potential violation of the requirements of Chapter 12.06, whether or not a complaint is filed with the commission.
- (Ords. 24499, 24733, 25525, 26440, 26976, 27291, 28213.)

#### **12.04.130 Excess contributions - Candidate.**

No person shall be found in violation of Sections 12.06.270 or 12.06.280 of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed by said sections, provided that such excess contribution was made, solicited or accepted at a time when the person was a candidate for the elective city office subject to the limitation, and as soon as reasonably possible and in no event more than thirty days after his or her discovery of the excess contribution either:

- A. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or
- B. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 25134, 26440.)

#### **12.04.140 Excess contributions - Officeholder.**

No person shall be found in violation of Section 12.06.820 or 12.06.830 of this chapter for having made or accepted any contribution in excess of the limits prescribed by such sections, provided that:

- A. The amount of contribution in excess of the prescribed limitations shall have been refunded to the donor within thirty days of receipt by the committee; or
- B. The amount of contribution in excess of the prescribed limits shall have been donated to the general fund of the City of San José within thirty days of receipt.

(Ords. 25134, 26440.)

#### **12.04.150 Precandidacy contributions.**

No person shall be found in violation of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed herein,

provided that the excess contribution was made, solicited or accepted at a time when the person was not a candidate for the elective city office subject to the limitation, and within thirty days of his or her becoming a candidate either:

- A. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or
- B. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24577, 26440.)

#### **12.04.160 Violations of this title.**

Enforcement of this title shall not be governed by Section 1.08.020 of this code unless such violation constitutes a separate violation of another section or provision of this code or of another applicable provision of law.

(Ords. 24499, 25525, 26440.)

#### **12.04.170 Subject to discipline.**

Any violation of this title by an officer or employee of the city or redevelopment agency may be deemed a failure to perform the duties under or observe the rules and regulations of the department, office, board or commission of such officer or employee within the meaning of the civil service ordinance and other city and agency rules and regulations.

(Ords. 24499, 26440.)

#### **12.04.180 Additional sanctions - Revolving door violations.**

In addition to any other remedy provided in this code, the following sanctions shall also apply to any violations of Chapter 12.10 where appropriate:

- A. Upon the petition of any interested person or party, a court or the presiding officer of any proceeding described in Section 12.10.020 may, after notice and an opportunity for hearing, exclude any person found to be in violation of Chapter 12.10 from further participation, or from assisting or counseling any other participant in the matter then pending before such court or presiding officer.
- B. City shall be entitled to recover from any former city or redevelopment agency officer or designated employee the monetary value of any

compensation or thing of value provided to such person in violation of the provisions of Chapter 12.10.

(Ords. 24499, 26440.)

## **Chapter 12.05**

### **ELECTIONS**

#### **Sections:**

**12.05.010 Superseding conflicting state laws.**

**12.05.020 Scheduling of city municipal elections.**

**12.05.030 Time for notice of election.**

**12.05.040 Nomination petitions.**

**12.05.050 Circulation of nomination petitions.**

**12.05.060 Nomination papers and filing deadline.**

**12.05.070 Number of nomination papers.**

**12.05.080 Formal written advice from city attorney.**

#### **12.05.010 Superseding conflicting state laws.**

In accordance with Charter Section 1602, the provisions of this chapter supersede any conflicting provisions in the California Elections or Government Codes.

(Ord. 25214.)

#### **12.05.020 Scheduling of city municipal elections.**

- A. A regular municipal election which is a regularly scheduled primary election shall be held on the same date that the state of California holds its direct primary election.
- B. A regular municipal election which is a run-off municipal election shall be held on the same date that the state of California holds its statewide general election.

(Ord. 25214.)

#### **12.05.030 Time for notice of election.**

The city clerk shall publish a notice of the city election which meets the standards of Section 6061 of the California Government Code, not earlier than the one hundred thirteenth nor later than the eighty-eighth day before any city municipal election to fill offices.

(Ord. 25214.)

**12.05.040 Nomination petitions.**

- A. Each candidate for city elective office shall be nominated by not less than fifty registered voters in the city. Not more than sixty signatures of registered voters shall be accepted and counted.
- B. Voters signing nomination papers for the office of member of the council, except the mayor, shall be residents of the district by which the member is to be elected.
- C. Voters signing nomination papers for the office of mayor shall be residents of the city and may reside anywhere in the city.

(Ord. 25214.)

**12.05.050 Circulation of nomination petitions.**

- A. Any person who circulates a nomination paper for the office of member of the council, except mayor, shall be registered to vote at the election in the district by which the member is to be elected.
- B. Persons circulating nomination papers for the office of mayor shall be registered to vote at the election in any part of the city.

(Ord. 25214.)

**12.05.060 Nomination papers and filing deadline.**

- A. The voters may nominate candidates for election by signing a nomination paper not earlier than the one hundred thirteenth day nor later than twelve noon on the eighty-eighth day before a city municipal election.
- B. All nomination papers shall be filed with the city clerk not later than twelve noon on the eighty-eighth day before the city municipal election, except as provided in subsection C. below.
- C. If nomination papers for an eligible incumbent elective officer of the city are not filed by twelve noon on the eighty-eighth day before the election, nomination papers for candidates other than the incumbent elective officer for such elective office may be filed with the city clerk until twelve noon on the eighty-third day before the election.

(Ord. 25214.)

**12.05.070 Number of nomination papers.**

More than one nomination paper may be circulated and filed for a candidate.

(Ord. 25214.)

**12.05.080 Formal written advice from city attorney.**

Any person may request the city attorney to provide written advice with respect to the person's duties under the provisions of Chapter 12.05 and Chapter 12.06. The city attorney must provide the advice within twenty-one working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding before the elections commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requestor, at least twenty-one working days before the alleged violation, requested written advice from the city attorney in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the city attorney to provide advice within twenty-one days of the request or such later extended time.

(Ord. 28660.)

**Chapter 12.06****MUNICIPAL CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS****Parts:**

- 1 Definitions
- 2 Campaign Contributions
- 3 Independent Committees
- 4 Transfer of Funds
- 5 Voluntary Spending Limits Program
- 6 Special Municipal Elections
- 7 Debt Retirement, and Surplus Campaign Funds
- 8 Officeholder Accounts
- 9 Campaign Disclosure
- 10 Electioneering Communications

**Part 1****DEFINITIONS****Sections:**

- 12.06.010 Definitions.
- 12.06.020 Business entity.
- 12.06.030 Candidate.



- 12.06.040 Committee.**
- 12.06.050 Contribution.**
- 12.06.060 Controlled committee.**
- 12.06.080 Election.**
- 12.06.110 Fair political practices commission.**
- 12.06.120 Independent committee.**
- 12.06.130 Independent expenditure.**
- 12.06.150 Reserved.**
- 12.06.160 Person.**
- 12.06.170 Political Reform Act.**
- 12.06.180 Statement of intention to be a candidate.**

#### **12.06.010 Definitions.**

The following definitions used in this chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000 et seq.) and the regulations of the California fair political practices commission, as amended.

(Ords. 24466, 24577, 25257, 26440, 27291.)

#### **12.06.020 Business entity.**

“Business entity” shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Ords. 24499, 24577, 25257, 26440.)

#### **12.06.030 Candidate.**

“Candidate” shall mean an individual who:

- A. Is listed on the ballot; or
- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or

- D. Has filed a form “statement of intention” to be a candidate with the city clerk.

(Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

#### **12.06.040 Committee.**

“Committee” means any person or combination of persons who, directly or indirectly, does any of the following:

- A. Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year; or
- B. Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- C. Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of a candidate or controlled committee.

A person or combination of persons that becomes a committee will retain its status as a committee until such time as that status is terminated pursuant to California Government Code Section 84214.

(Ords. 24499, 24577, 25257, 25447, 26440, 28624.)

#### **12.06.050 Contribution.**

- A. “Contribution” means:

- 1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, or it is clear from the surrounding circumstances that the contribution is not made for political purposes.
- 2. An expenditure benefiting a candidate or committee made at the behest of a candidate, candidate controlled committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.

- B. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full

and adequate consideration; and the transfer of anything of value.

- C. The payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends any of his or her compensated time rendering services for political purposes related to a city candidate or committee is a contribution or an expenditure if:
1. The employee renders services at the request or direction of the employer; or
  2. The employee, with the consent of the employer, is relieved of any normal working responsibilities related to his or her employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.
- D. Payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, or independent expenditures made by independent committees are not deemed to be contributions for purposes of this chapter. (Ords. 24499, 24577, 25257, 26440, 28280, 28624.)

**12.06.060 Controlled committee.**

“Controlled committee” shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent, or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee. (Ords. 24499, 24577, 25257, 26440.)

**12.06.080 Election.**

“Election” and “city election” mean any regular municipal or special municipal election in the city. (Ords. 24499, 24577, 25257, 26440, 28624.)

**12.06.110 Fair political practices commission.**

“Fair political practices commission” is the body charged with administering the Political Reform Act and adopting implementing regulations. (Ords. 24499, 24577, 25257, 26440.)

**12.06.120 Independent committee.**

“Independent committee” shall mean all committees other than controlled committees. (Ords. 24499, 24577, 25257, 26440.)

**12.06.130 Independent expenditure.**

“Independent expenditure” means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or his or her controlled committee. (Ords. 24499, 24577, 25257, 26440, 27291, 28624.)

**12.06.150 Reserved.**

**Editor’s note:** Ord. No. 28213, § 1, adopted January 8, 2008, repealed § 12.06.150, which pertained to officeholder contributions.

**12.06.160 Person.**

“Person”, for purposes of this chapter, shall include an individual, business entity, foundation, organization, committee or association, nonprofit corporation, and any other organization or group of people acting in concert. (Ords. 24499, 24577, 25257, 26440.)

**12.06.170 Political Reform Act.**

“Political Reform Act” is the California Political Reform Act of 1974 (Government Code Sections 81000 et seq., as amended). (Ords. 24499, 24577, 25257, 26440, 28624.)

**12.06.180 Statement of intention to be a candidate.**

The form “statement of intention” is a written statement, filed with city clerk in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective city office. (Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

**Part 2****CAMPAIGN CONTRIBUTIONS****Sections:**

- 12.06.200 Intent and purpose.**
- 12.06.210 Campaign contribution limitations.**
- 12.06.220 Applicability to agents.**
- 12.06.230 Anonymous contributions.**
- 12.06.235 Information needed prior to deposit.**
- 12.06.240 Contributions through other persons prohibited.**
- 12.06.250 Contributions by certain business entities prohibited.**
- 12.06.260 Prohibited contributions - Cardrooms.**
- 12.06.270 Reserved.**
- 12.06.280 Reserved.**
- 12.06.290 Campaign contribution collection period.**
- 12.06.295 Deposit of personal funds into campaign bank accounts.**

**12.06.200 Intent and purpose.**

It is the intent of the city council of the City of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

(Ords. 24499, 24577, 25257, 26440.)

**12.06.210 Campaign contribution limitations.**

- A. Until December 31, 2010, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
  - 1. One hundred dollars (\$100) for the primary election;
  - 2. One hundred dollars (\$100) for the general election, if any;
- B. Beginning January 1, 2011, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
  - 1. Two hundred dollars (\$200) for the primary election;
  - 2. Two hundred dollars (\$200) for the general election, if any;
  - 3. Two hundred dollars (\$200) for any special election.
- C. Until December 31, 2010, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
  - 1. Two hundred fifty dollars (\$250) for the primary election;
  - 2. Two hundred fifty dollars (\$250) for the general election, if any;
  - 3. Two hundred fifty dollars (\$250) for any special election.
- D. Beginning January 1, 2011, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
  - 1. Five hundred dollars (\$500) for the primary election;
  - 2. Five hundred dollars (\$500) for the general election, if any;
  - 3. Five hundred dollars (\$500) for any special election.
- E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for

odd numbered years. If the CPI has increased for the applicable base period, the city clerk must multiply the contribution limits established in subsections C. and D. by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit(s) established in subsections C. and/or D. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city council adopt a resolution specifying the adjusted contribution limit(s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- F. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 will apply in lieu of subsections A., B., C. and D.

(Ords. 24499, 24577, 24845, 25257, 25445, 26440, 28654.)

#### **12.06.220 Applicability to agents.**

- A. "Agent" shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate, or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans and needs.

- B. The prohibitions and requirements of this chapter applicable to a candidate shall also apply to the candidate's agent.

(Ords. 24499, 24577, 25257, 26440, 27291.)

#### **12.06.230 Anonymous contributions.**

- A. No person may make nor may any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value for a clearly identified candidate for San José city council or mayor.
- B. All anonymous contributions must be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24499, 24577, 25257, 26440, 28654.)

#### **12.06.235 Information needed prior to deposit.**

No contribution of any amount shall be deposited into a campaign account unless the name, address, occupation and employer of the contributor is on file in the written records of the candidate receiving the contribution.

(Ords. 25257, 26440.)

#### **12.06.240 Contributions through other persons prohibited.**

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

- A. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.
- B. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ords. 24499, 24577, 25257, 25447, 26440.)

#### **12.06.250 Contributions by certain business entities prohibited.**

Except as otherwise provided in this chapter, contributions by business entities shall be defined and

limited in accordance with the Political Reform Act as amended.

(Ords. 24499, 24577, 25257, 25447, 26440, 28280.)

#### **12.06.260 Prohibited contributions - Cardrooms.**

A. A cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer may not make any contribution to candidates or candidate controlled committees under this chapter.

B. Cardroom and cardroom owner are as defined in Chapter 16.02 of this code.

C. A key management employee of a cardroom is any person who has the authority to hire or fire other employees.

(Ords. 24499, 24577, 25257, 26440, 28624.)

#### **12.06.270 Reserved.**

**Editor's note:** Ord. No. 28654, § 3, adopted November 3, 2009, repealed § 12.06.270, which pertained to contribution limitations to city council candidates.

#### **12.06.280 Reserved.**

**Editor's note:** Ord. No. 28654, § 4, adopted November 3, 2009, repealed § 12.06.280, which pertained to contribution limitations to mayoral candidates.

#### **12.06.290 Campaign contribution collection period.**

A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period.

B. The campaign contribution period for the primary municipal election for council or mayor shall:

1. Begin on the one hundred eightieth day before the primary municipal election.
2. End at midnight on the seventeenth day prior to the primary municipal election.

C. The campaign contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the day after the primary municipal election for that office.
2. End at midnight on the seventeenth day prior to a run-off municipal election for that office.

D. Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

(Ords. 24499, 24577, 25257, 25525, 25942, 26440, 28213.)

#### **12.06.295 Deposit of personal funds into campaign bank accounts.**

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by subsection A. must be reported, on a form provided by the city clerk, on or before the date of the next pre-election statement which must be filed after the funds are deposited into the campaign bank account.

C. No candidate may deposit personal funds into his or her campaign bank account during the period beginning seven days prior to election day.

D. No candidate shall make loans to his or her own campaign or campaign committee where the outstanding total, at any one point in time, is more than twenty thousand dollars. Nothing in this chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign.

(Ords. 24499, 24577, 25257, 26440.)

### **Part 3**

#### **INDEPENDENT COMMITTEES**

##### **Sections:**

**12.06.310 Contribution limitations to independent committees.**

**12.06.320 Contributions and expenditures by independent committees.**

**12.06.330 Contribution period for independent committees.**

**12.06.310 Contribution limitations to independent committees.**

- A. Until December 31, 2010, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a contribution to a clearly identified candidate for San José city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor which will cause the total amount contributed by the person to the independent committee to exceed two hundred fifty dollars (\$250) per election.
- B. Beginning January 1, 2011, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a contribution to a clearly identified candidate for San José city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor which will cause the total amount contributed by the person to the independent committee to exceed five hundred dollars (\$500) per election.
- C. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the city clerk must multiply the contribution limits established in subsection B. by the percentage increase for the base period. If the calculation results in an

amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit(s) established in subsection B. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city council adopt a resolution specifying the adjusted contribution limit(s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- D. If an independent committee will be contributing to or making expenditures in campaigns in addition to City of San José council or mayoral campaigns, it shall segregate, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor. Where an independent committee has segregated contributions which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor, contributors to that committee may contribute more than the applicable contribution limit established in subsection A., B. or C. so long as no portion of the contribution in excess of the applicable contribution limit established in subsection A., B. or C. is used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a

communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor.

- E. To the extent an independent committee segregates, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José city council or mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José city council or mayor, as required by subsection D., this section is not intended to prohibit or regulate contributions to independent committees used for elections other than a San José mayoral or council election.

(Ords. 24499, 24577, 25257, 25447, 26440, 28654.)

#### **12.06.320 Contributions and expenditures by independent committees.**

- A. Independent committees are “persons” for purposes of the contribution limitations to city council and mayoral candidates. Any expenditure by an independent committee for a clearly identified candidate for San José city council or mayor which is not an “independent expenditure” is deemed to be a contribution to that candidate, subject to the limitations of this chapter.
- B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 12.06.910. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 24499, 24577, 25257, 26440, 28654.)

#### **12.06.330 Contribution period for independent committees.**

Contributions to independent committees for the purpose of supporting or opposing candidates for city

office shall be subject to the campaign collection period set forth in Section 12.06.290.

(Ords. 25447, 26440.)

### **Part 4**

## **TRANSFER OF FUNDS**

### **Sections:**

#### **12.06.410 Prohibition on transfer of funds.**

#### **12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.**

#### **12.06.430 Reserved.**

#### **12.06.410 Prohibition on transfer of funds.**

- A. The transfer of any city campaign funds to any other person's city campaign fund is prohibited.
- B. The transfer of any city campaign contribution to any other candidate's noncity campaign fund is prohibited.

(Ords. 24499, 24577, 25257, 26440, 28212.)

#### **12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.**

- A. No contribution collected for any city campaign fund may be transferred to another campaign fund of the candidate, unless a written disclosure appeared on all materials printed by the campaign committee during the campaign, which informed potential donors that such contributions are subject to being transferred to the candidate's own city and noncity campaigns, at any time, at the discretion of the candidate.
- B. The disclosure required by this section shall consist of the following statement in fourteen point type: Any contribution to this campaign may be transferred to this candidate's campaign for reelection or another city or noncity campaign at (name of the candidate's) sole discretion.

(Ords. 24499, 24577, 25257, 25447, 26440.)

#### **12.06.430 Reserved.**

**Editor's note:** Ord. No. 28213, § 3, adopted January 8, 2008, repealed § 12.06.430, which pertained to transfer of city officeholder funds.

**Part 5****VOLUNTARY SPENDING LIMITS PROGRAM****Sections:**

**12.06.500 Voluntary campaign expenditure limits program.**

**12.06.510 Voluntary campaign expenditure limits.**

**12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.**

**12.06.530 Expenditure limits.**

**12.06.540 Campaign contribution limits.**

**12.06.550 Notification to voters.**

**12.06.560 Expenditure limits tripled.**

**12.06.500 Voluntary campaign expenditure limits program.**

Each candidate participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of the provisions of this chapter.

(Ords. 25445, 26440.)

**12.06.510 Voluntary campaign expenditure limits.**

- A. Each candidate must file an expenditure ceiling statement with the city clerk indicating whether or not he or she will participate in the voluntary campaign expenditure limits program before accepting or receiving any campaign contributions.
- B. Each candidate who has filed an expenditure ceiling statement indicating participation in the program shall be subject to the expenditure limits set forth in Section 12.06.530.
- C. Any candidate who declined to accept the expenditure ceiling statement in Section 12.06.530 but who, nevertheless, did not exceed the voluntary expenditure limits in the primary election or special primary election may file an amendment to the expenditure ceiling statement, accepting participation in the voluntary campaign expenditure limits program for the general or special run-off election, within fourteen days following the primary or special primary election and receive all the benefits of the program specified in this chapter.

- D. Expenditures for purposes of the expenditure limits shall include in-kind or non-monetary contributions.

(Ords. 25445, 25942, 26440.)

**12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.**

- A. Campaign funds collected for the primary municipal election or collected for the run-off municipal election by candidates who voluntarily participate in the voluntary campaign expenditure limits program shall not be transferred to any ballot measure committee.
- B. Campaign funds collected for the primary municipal election by candidates who voluntarily participate in the voluntary campaign expenditure program shall not be transferred to the candidate's run-off municipal election campaign. Remaining campaign funds after the primary municipal election shall be deemed to be surplus campaign funds and shall be distributed in accordance with the provisions of this chapter.

(Ords. 26024, 26440.)

**12.06.530 Expenditure limits.**

- A. The expenditure limits shall be set at:
  1. Seventy five cents per resident of the city for candidates for the office of mayor; and
  2. One dollar per resident of the district for candidates for council office.
- B. The city council shall adopt an expenditure limits resolution, in advance of each election cycle, specifying the expenditure limits. The expenditure limits shall be based on census data supplied by the director of the department of planning, building and code enforcement for the city and each council district and adjusted by the percentage increase in residents as determined by population data provided by the state of California, department of finance, city/county population estimates.
- C. No candidate who files an expenditure ceiling statement participating in the voluntary campaign expenditure limits program shall make any campaign expenditure above the limits set forth in the expenditure limits resolution.
- D. The city council shall review the amount of the expenditure limits set forth in subsection A. above, nine months in advance of each election, to determine if any change is warranted.

(Ords. 25445, 25942, 26440.)



**12.06.540 Campaign contribution limits.**

Candidates who participate in the voluntary campaign expenditure limits program are entitled to collect contributions in the following amounts:

- A. Until December 31, 2010, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than two hundred fifty dollars (\$250) in the aggregate.
- B. Beginning January 1, 2011, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.
- C. Until December 31, 2010, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.
- D. Beginning January 1, 2011, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than one thousand dollars (\$1,000) in the aggregate.
- E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the city clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 - 1984 = 100) for all urban consumers in the San Francisco-Oakland-San José area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for

the applicable base period, the city clerk must multiply the contribution limits established in subsections C. and D. by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the city clerk will then increase the corresponding contribution limit(s) established in subsections C. and/or D. by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the city council adopt a resolution specifying the adjusted contribution limit(s). In the event the city council adopts a resolution specifying the contribution limits, the city clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the clerk shall use as a reference another index published by either the state of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

(Ords. 25445, 26440, 28654.)

**12.06.550 Notification to voters.**

The ballot, ballot pamphlet and sample ballot shall prominently designate those candidates who participate in the program.

(Ords. 25445, 26440.)

**12.06.560 Expenditure limits tripled.**

Notwithstanding Section 12.06.530.

- A. If a candidate who is not participating in the voluntary campaign expenditure limits program receives contributions, has cash on hand, or makes qualified expenditures equal to seventy-five percent or more of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.
- B. If an independent expenditure committee(s) spend in the aggregate, in support or opposition to a candidate, more than fifty percent of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

(Ords. 25445, 26440.)

**Part 6****SPECIAL MUNICIPAL ELECTIONS****Sections:****12.06.600 Special municipal elections.****12.06.610 Campaign contribution collection period - Campaign disclosure.****12.06.620 Voluntary campaign expenditure limits program - Special election.****12.06.600 Special municipal elections.**

- A. Except as otherwise provided by this Part 6, the provisions of Chapter 12.06 shall apply to special municipal elections. Part 6 of Chapter 12.06 shall only apply to special municipal elections which do not exceed a six-month period from the call of the special municipal election to the date of a special municipal run-off election if any.
- B. The prohibition on transfers of any city campaign funds to any other person's city campaign fund in Section 12.06.410 shall apply to any special municipal election.
- C. The prohibition on transfers of any city campaign funds to any other candidate's noncity campaign fund in Section 12.06.410 shall apply to any special municipal election.
- D. The disclosure requirements for transfers of city campaign funds to a candidate's own city and noncity campaign in Section 12.06.420 shall apply to any special municipal election.

(Ords. 26239, 26440, 28212.)

**12.06.610 Campaign contribution collection period - Campaign disclosure.**

- A. The campaign contribution collection periods for the special municipal election and a special municipal runoff election shall:
  - 1. Begin on the date that the special municipal election is set by the city council and begin the day after the special municipal election for any runoff election.
  - 2. End at midnight on the seventh day prior to the election and the seventh day prior to any runoff election.
- B. Each candidate and each committee shall file, as a public record with the city clerk, cumulative itemized campaign statements completed on campaign statement forms required to be filed by the regulations of the fair political practices

commission by no later than the fifth day prior to the special municipal election and the fifth day prior to any special municipal runoff election.  
(Ords. 26239, 26440, 28213.)

**12.06.620 Voluntary campaign expenditure limits program - Special election.**

- A. Unless otherwise provided in this Part 6, each candidate in any special municipal election participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of this chapter.
- B. Campaign funds collected for a special municipal election by candidates including those candidates participating in the voluntary campaign expenditure limits program may be transferred to the candidate's special municipal run-off election campaign.

(Ords. 26239, 26440.)

**Part 7****DEBT RETIREMENT, AND SURPLUS CAMPAIGN FUNDS****Sections:****12.06.710 Deadline for debt retirement.****12.06.720 Surplus campaign funds.****12.06.710 Deadline for debt retirement.**

- A. No money can be collected for debt retirement after the end of the campaign contribution collection period as set forth in Section 12.06.290.
- B. A candidate must retire all campaign-related debts, including loans, within six months after the date of the election.
- C. A campaign-related debt, including any loan, which remains unpaid more than six months after the election is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.
- D. It is a violation of this section to forgive all or part of a loan or debt which is owed to the person by a candidate and which exceeds the applicable contribution limitations. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the

monies owed and such efforts have proved unsuccessful. In such case, a candidate is not exonerated from violations of this chapter if an outstanding loan or debt exceeds the contribution limitations.

(Ords. 24499, 24577, 25257, 26440.)

#### **12.06.720 Surplus campaign funds.**

Any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act, shall be deemed to be surplus campaign funds. Within ninety days after withdrawal, defeat, or election to office, the surplus campaign funds shall be returned to the contributors on a pro rata basis, or turned over to the general fund. (Ords. 25257, 26440, 28212.)

### **Part 8**

#### **OFFICEHOLDER ACCOUNTS\***

**\*Editor's note:** Ord. No. 28212, § 6, adopted January 8, 2008, repealed Part 8, §§ 12.06.810 - 12.06.890, which pertained to officeholder accounts. Section 8 of Ordinance 28212 enacted a new Part 8, § 12.06.810, effective July 1, 2008.

#### **Sections:**

#### **12.06.810 Officeholder account prohibited.**

#### **12.06.810 Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

(Ord. 28212.)

#### **12.06.820 - 12.06.890 Reserved.**

### **Part 9**

#### **CAMPAIGN DISCLOSURE**

#### **Sections:**

#### **12.06.910 Statements and reporting requirements.**

#### **12.06.915 Electronic campaign disclosure.**

#### **12.06.920 Duties of the city clerk.**

#### **12.06.930 Disclosure of post-election payment agreements.**

#### **12.06.910 Statements and reporting requirements.**

- A. Each candidate, candidate controlled committee and independent committee receiving contributions or making expenditures in a city election must file with the city clerk campaign disclosure statements in the form and at the times required by Chapter 12.06 and the Political Reform Act. The campaign disclosure statements must show the total amount of contributions accepted and expenditures made, including independent expenditures. The campaign disclosure statements may be completed on forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. The campaign disclosure statements must contain a declaration by the candidate or controlled committee treasurer that the candidate or committee has not accepted nor solicited any campaign contribution in violation of the requirements and limitations of this chapter.
- B. When listing contributions, each candidate and candidate controlled committee receiving contributions or making expenditures in a city election must itemize all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars (\$100).
- C. The first and second campaign statements must be filed at the times prescribed for pre-election statements by the Political Reform Act as well as any other times prescribed in Chapter 12.06, for candidates, candidate controlled committees and independent committees for whom the city clerk is the regular filing official. If the city clerk is not the regular filing official for an independent

committee receiving contributions and making expenditures in a city election, the independent committee must file campaign statements with the city clerk in accordance with this chapter.

- D. Once an independent committee whose primary filing official is not the city clerk has filed a campaign disclosure statement with the city clerk, the committee must also file with the city clerk, within two business days, copies of campaign disclosure statements filed by the committee with its regular filing official for the previous twelve months.
- E. Once an independent committee whose primary filing official is not the city clerk has filed a campaign disclosure statement with the city clerk, from that date forward, that committee's campaign disclosure statements must be filed with the city clerk in the form and at the times required by Chapter 12.06, the California Political Reform Act and the California fair political practices commission until the committee terminates or has not received contributions or made expenditures, including independent expenditures, in an election in the City of San José for four years.
- F. If any person files a campaign disclosure statement after any deadline imposed by this chapter, the city clerk must fine the person ten dollars (\$10.00) per day, starting the day after the filing deadline, until the statement is filed; however, no liability may exceed the cumulative amount of reported contributions or expenditures, or \$100, whichever is greater. The city clerk may reduce or waive the fine if he or she determines that the late filing was not willful and that enforcement will not further the purposes of this chapter.

(Ords. 24499, 24577, 24733, 25257, 26440, 28624.)

#### **12.06.915 Electronic campaign disclosure.**

- A. Each candidate, candidate controlled committee and independent committee that is required to file campaign disclosure statements by Chapter 12.06 or the Political Reform Act must file at the same time a copy of the statement in an electronic format with the city clerk, provided the city clerk has prescribed the format at least sixty days before the statement is due to be filed.

- B. Once a candidate or committee is subject to the electronic filing requirements imposed by this section, the candidate or committee will remain subject to the electronic filing requirements until the candidate or committee files a termination statement pursuant to Chapter 12.06 and the Political Reform Act.
- C. The requirements of this section do not abrogate any requirements in Chapter 12.06 or the Political Reform Act that paper copies be filed. (Ord. 28678.)

#### **12.06.920 Duties of the city clerk.**

- A. The city clerk shall, at least five days before an election for mayor or city council of the City of San José, prepare a report to be published in the San José Mercury News. The report must contain the total amount of contributions and expenditures for each of the candidates and for each committee receiving contributions or making expenditures, including independent expenditures, in an election for mayor or members of city council of the City of San José. The clerk shall cause the report is published in the San José Mercury News at least two days before the election.
- B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk must notify the elections commission. (Ords. 24499, 24577, 25257, 26440, 28624.)

#### **12.06.930 Disclosure of post-election payment agreements.**

- A. A candidate or his or her controlled committee must disclose, on a form provided by the city clerk, any campaign-related agreements entered into by the candidate or controlled committee which provide for post-election payments. Such agreements include, but are not limited to, contingency payment or "bonus" payment plans offered by campaign consultants and agreements with persons who will receive compensation after the election for campaign services performed prior to the election.
- B. A post-election payment agreement must be reported on or before the filing date of the next preelection statement which must be filed after the agreement is entered into. (Ords. 24499, 24577, 25257, 26440.)

**Part 10****ELECTIONEERING COMMUNICATIONS\***

**\*Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed Part 10, §§ 12.06.1000 - 12.06.1030, which pertained to campaign communications, and re-enacted Part 10 as set forth herein.

**Sections:**

- 12.06.1000 Electioneering communication.**  
**12.06.1010 Disclosure of electioneering communications.**  
**12.06.1020 Reserved.**  
**12.06.1030 Reserved.**

**12.06.1000 Electioneering communication.**

- A. "Electioneering communication" means any form of communication, for which payment is made, that refers to a clearly identified candidate for mayor or city council of the City of San José and is disseminated, broadcast, or otherwise published within ninety calendar days of an election for which the candidate is on the ballot.
- B. If subsection A. is held to be constitutionally insufficient by final judicial decision to support the regulation provided in this part, then the term "electioneering communication" means any form of communication, for which payment is made, which promotes or supports a candidate for mayor or city council of the City of San José, or attacks or opposes a candidate for mayor or city council of the City of San José (regardless of whether the communication expressly advocates a vote for or against a candidate), and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.

(Ord. 28624.)

**12.06.1010 Disclosure of electioneering communications.**

- A. Every electioneering communication in printed form paid for by a candidate or controlled committee must include the words "paid for by" immediately followed by the name, street address and city of the candidate or controlled committee that paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than twelve points in size. If an

acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this section.

- B. Every electioneering communication in printed form paid for by an independent committee must place the following statement on the mailing in typeface no smaller than twelve points:

**Notice to Voters**

(Required by the City of San José)

This mailing is not authorized or approved by any candidate for city office or by any election official. It is paid for by (name and committee identification number).

(Address, city, state).

Total cost of this mailing is (amount).

If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this section.

- C. Every electioneering communication in spoken form must include the words "paid for by" immediately followed by the name of the candidate, controlled committee or independent committee that paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.
- D. Any independent committee that makes a payment or payments or a promise of a payment or payments that cumulatively total one thousand dollars (\$1,000) or more for an electioneering communication must file with the city clerk a report on a form approved by the city clerk disclosing the independent committee's name, address, occupation, and employer, and the amount of the payment. The report must be filed within twenty-four hours of making the payment or the promise to make the payment, and must be accompanied by a legible copy of the electioneering communication if in printed form or a transcript of the electioneering communication if in spoken form.

- E. Except as provided in this section, if any independent committee has received a payment or a promise of a payment from another person totaling one hundred dollars (\$100) or more specifically for the purpose of making the electioneering communication, the independent committee receiving the payment must disclose on the report the name, address, occupation, and employer of the person who made a payment or promise of a payment, the amount received and the date of the payment.
- F. A person who receives or is promised a payment that is otherwise reportable under this section is not required to report the payment if the person provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.
- G. The provisions of this section do not apply to:
  1. News stories, commentaries or editorials disseminated, broadcast or otherwise published by newspaper, radio station, television station, internet site or any other recognized news medium unless the news medium is owned or controlled by any political party, political committee or candidate;
  2. Communications to members of an organization, except those made by a political party;
  3. Communications paid for by a governmental entity;
  4. Communications that occur during a candidate debate or forum;
  5. Communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate;
  6. Communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display;
  7. Spoken communications between two or more individuals in direct conversation unless at least one of the individuals is compensated for the purposes of making the communication; or
  8. Communications that appear on bumper stickers, pins, stickers, badges, ribbons and other similar memorabilia.

- H. Any communication, other than a communication to members of an organization, made at the behest of a candidate is a contribution to that candidate and is subject to the limits and prohibitions specified in Chapter 12.06 of the San José Municipal Code.  
(Ord. 28624.)

**12.06.1020 Reserved.**

**Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed § 12.06.1020, which pertained to disclosure requirements - campaign advertisements.

**12.06.1030 Reserved.**

**Editor's note:** Ord. No. 28624, § 13, adopted August 11, 2009, repealed § 12.06.1030, which pertained to disclosure requirements - recorded telephone messages.

## Chapter 12.08

### PROHIBITION OF GIFTS

**Sections:**

**12.08.010 Gifts prohibited.**

**12.08.015 Political reform act requirements.**

**12.08.020 Gift defined.**

**12.08.030 Gifts not prohibited.**

**12.08.040 Acceptance of gifts.**

**12.08.050 Reporting gifts to domestic partner, spouse and children.**

**12.08.010 Gifts prohibited.**

- A. No officer or designated employee of the city or its redevelopment agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this chapter.
- B. "Person subject to the decision-making or recommending authority" means any individual, firm or entity whose interest or whose employer's or client's interest:
  1. Has been materially affected by the work of such officer or employee within the two years prior to the time the gift is given; or
  2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

(Ords. 24499, 27258.)

**12.08.015 Political reform act requirements.**

- A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act, California Government Code Section 81000 et seq., as amended, and the requirements in this chapter.
  - B. The gift limitations and disqualification requirements under the political reform act are applicable to gifts which are not prohibited by this chapter.
- (Ord. 27258.)

**12.08.020 Gift defined.**

“Gift” means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

- A. As used in this chapter, the term “gift” includes:
    - 1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.
    - 2. An officer’s or employee’s community property interest, if any, in a gift received by that individual’s spouse.
    - 3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.
  - B. As used in this chapter, the term “gift” does not include:
    - 1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.
    - 2. Any devise or inheritance.
- (Ords. 24499, 27258.)

**12.08.030 Gifts not prohibited.**

This chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

- A. Gifts with a value less than fifty dollars: Gifts, including meals and beverages provided to an officer or employee in a business or social setting, that have a value less than fifty dollars, as long as the total value of all such gifts received from any one donor do not exceed fifty dollars in any calendar year.
- B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such

expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.

- C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual’s primary residence.
- D. Reciprocal gifts: Gifts exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.
- E. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.
- F. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include theatrical productions and art exhibits; political events include political fund raisers.
  - 1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.
  - 2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.
- G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty miles from San José and where the situs of the employment will be at least the same distance from the city.
- H. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bona fide prospect of employment, when the expenses are advanced or reimbursed to an officer or

designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.

- I. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the city council or redevelopment agency board or which is pursuant to a written city or redevelopment agency policy for intrastate or interstate travel regardless of the source of payment.
- J. City or redevelopment agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or redevelopment agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five miles one way. Nothing in this subsection shall be interpreted to limit the city council's or redevelopment agency board's discretion to approve travel under subsection I. above.
- K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.
- L. Prizes and awards from bona fide competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a city or redevelopment agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974, as amended.
- M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12. (Ords. 24499, 27258.)

#### **12.08.040 Acceptance of gifts.**

A gift shall be deemed to have been accepted except where:

- A. It is not used, and, within thirty days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- B. It is treated as and remains the property of the city or the redevelopment agency.
- C. It is received by an officer or designated employee in his or her official capacity or as a representative of the city or redevelopment agency, is reported to the city council or agency board, and the council or board approves the retention.

(Ords. 24499, 27258.)

#### **12.08.050 Reporting gifts to domestic partner, spouse and children.**

- A. At the time of filing the annual disclosure statement required by the political reform act or any applicable conflict-of-interest code, each city and redevelopment agency officer and designated employee shall file a family gift report on a form to be provided by the city clerk.
- B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's domestic partner, spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.
- C. For purposes of this section, "domestic partner" shall mean any person registered as a domestic partner by an employee with the City of San José.

(Ords. 24499, 27258.)

### **Chapter 12.10**

#### **REVOLVING DOOR RESTRICTIONS\***

**\*Editor's note:** Ord. No. 28074, § 1, adopted June 26, 2007, effective August 1, 2007, amended Chapter 12.10, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Chapter 12.10 pertained to similar subject matter.



**Sections:**

- 12.10.010 Purpose.**
- 12.10.020 Definitions.**
- 12.10.030 Prohibitions for former officials and designated employees.**
- 12.10.040 Prohibition for former commission members.**
- 12.10.050 Exceptions.**
- 12.10.060 Applicability.**
- 12.10.070 Waiver.**
- 12.10.080 Enforcement.**
- 12.10.090 Penalties.**
- 12.10.100 Severability.**

**12.10.010 Purpose.**

The purposes of this chapter are:

- A. To assure the independence, impartiality and integrity of city and agency officials and designated employees in making governmental decisions and taking governmental actions.
- B. To prevent such former officials and designated employees from using their positions with the city or agency for personal gain.
- C. To prevent private for-profit business entities from obtaining a real or perceived unfair advantage in dealing with the city or agency by hiring former officials and designated employees.

(Ord. 28074.)

**12.10.020 Definitions.**

For purposes of this chapter, the terms below have the following meaning:

- A. "Agency official" means the chairperson and members of the board of directors of the redevelopment agency of the City of San José.
- B. "City official" means the mayor and city councilmembers.
- C. "Commission" means any body created by the city council or agency board whose members are required to file statements of economic interest pursuant to the Political Reform Act of 1974 as amended (Gov. Code §§ 81000 et seq.).
- D. "Employee" has the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- E. "Nonprofit organization" means an entity which would qualify as such under the federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the city council or

redevelopment agency board within the past five years.

- F. "Transitional services" means services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the city or the agency.
- G. "Work" means any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 12.10.050. Work for the city or agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a city or agency official or designated employee on any type of board, committee or similar body as a representative of the city or agency is deemed to be work for the city or agency.

(Ord. 28074.)

**12.10.030 Prohibitions for former officials and designated employees.**

No city or agency official or designated employee, for two years after terminating city or agency office or employment, may:

- A. Work on any legislative or administrative matter on which the official or employee worked on behalf of the city or agency during the twelve months prior to termination of service, or which was within the former city or agency official's or designated employee's area of job responsibility. "Work on any legislative or administrative matter" includes, but is not limited to, providing advice or recommending any action with regard to a city or agency legislative or administrative matter such as a project involving land use, development, or public works. Legislative matters include city council, agency board and city board or commission actions related to ordinances, resolutions, agreements, permits or licenses.
- B. Represent anyone else on any matter, whether or not for compensation, before the city council, redevelopment agency board, any commission thereof, any individual member of the city council, redevelopment agency board, or commission, or any staff of the city or agency.
- C. Receive any gift or payment which would be prohibited under Chapter 12.08 from any person who was, in any way, involved in or affected by

the work of the official or employee during the twelve months prior to the termination of service.  
(Ord. 28074.)

**12.10.040 Prohibition for former commission members.**

No member of a commission may, for two years after leaving the commission, represent anyone else, whether or not for compensation, before the commission on which the former member served. No other provisions of this chapter apply to persons serving on a commission who are not otherwise city or agency officials or designated employees.  
(Ord. 28074.)

**12.10.050 Exceptions.**

The following persons are not subject to the prohibitions of Section 12.10.030:

- A. An employee or volunteer of a nonprofit organization, as defined in Section 12.10.020 E.;
- B. An employee or official of a government entity;
- C. An independent contractor of the city or agency where it has been determined that it is in the best interest of the city or agency to retain the former official or employee to provide transitional services. Such determination will be made by the person or body authorized to enter into such a contract. In such event, the city or agency will contract directly with the former official or employee. The rate of compensation for such services must not exceed the former official's or employee's rate of pay, including benefits, at the time city or agency service terminated.

(Ord. 28074.)

**12.10.060 Applicability.**

- A. The provisions of this chapter will not prevent a former city or agency official or designated employee from testifying as a percipient witness in any legal proceeding.
- B. The provisions of this chapter will not prevent a former city or agency official or designated employee from working as a supervisor of a person or persons performing work that would be prohibited by this chapter, so long as the supervisor is screened from any personal participation in the work and receives no part of the fee therefrom.

(Ord. 28074.)

**12.10.070 Waiver.**

The city council or redevelopment agency board of directors may waive the prohibitions of Section 12.10.030 if the council or board finds that such waiver is in the best interest of the city or agency and that such waiver is consistent with the purposes of this chapter as set forth in Section 12.10.010.  
(Ord. 28074.)

**12.10.080 Enforcement.**

- A. The city attorney may conduct inquiries or investigate complaints of violations of this chapter. The city attorney may seek judicial relief to enjoin violations of or to compel compliance with the provisions of this chapter.
- B. A city or agency official, designated employee or person who is subject to the provisions of this chapter may request a formal written opinion from the city attorney and may reasonably rely on such advice in order to comply with the requirements of this chapter. Before such opinion is rendered, such official or employee must fully cooperate with the city attorney in disclosing facts and information in order to prepare the formal opinion.
- C. Any person may file a complaint alleging a violation of this chapter with the elections commission through the office of the city clerk.
- D. The city attorney may put persons on notice of a potential violation of the requirements of this chapter, whether or not a complaint is filed with the elections commission.

(Ord. 28074.)

**12.10.090 Penalties.**

Violations of this chapter may result in civil penalties of up to five thousand dollars (\$5,000) for each violation. The City of San José or the redevelopment agency are entitled to recover from any former city or agency official or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this chapter.

(Ord. 28074.)

**12.10.100 Severability.**

If any section, subsection, sentence, clause, or phrase of this chapter heretofore or hereafter adopted by the city council of the City of San José is for any reason held to be invalid or unconstitutional by a

decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the chapter. Each and every section, subsection, sentence, clause or phrase of this chapter is severable from all other sections, subsections, sentences, clauses or phrases.  
(Ord. 28074.)

## Chapter 12.12

### SAN JOSE MUNICIPAL LOBBYING\*

**\*Editor's note:** Ord. No. 28074, § 2, adopted June 26, 2007, effective August 1, 2007, amended Chapter 12.12, in its entirety, to read as herein set out. Prior to inclusion of the ordinance, Chapter 12.10 pertained to lobbyist regulations.

#### Parts:

- 1 Title, Purpose, Application, and Exemptions
- 2 Definitions
- 3 Contingent Compensation to Lobbyists
- 4 Requirements
- 5 Prohibited Activities
- 6 Compliance, Training, and Enforcement
- 7 Prohibition for City Officials
- 8 Disclosure of Communications with Registered Lobbyists

#### Part 1

### TITLE, PURPOSE, APPLICATION, AND EXEMPTIONS

#### Sections:

- 12.12.010 Title, purpose, and application.  
12.12.020 Exemptions.  
12.12.030 Severability.

#### 12.12.010 Title, purpose, and application.

- A. This chapter will be known as the San José Municipal Lobbying Ordinance.
- B. The purposes of this chapter are:
  1. To guarantee to the residents of the city that the City of San José (city) continues the

highest ethical work environment for the residents of the city and the city's elected officials and employees.

2. In the spirit of open and transparent government, to allow the public to know and better understand the relationship between its elected officials, lobbyists, and lobbyist's clients.
  3. To enhance public confidence and trust with respect to lobbyist activities and city practices.
  4. To ensure that the requirements of this chapter and their implementation are responsive to the goal of making it easy to do business with the city.
  5. To bring about clarity and certainty about applicable provisions among stakeholders.
  6. To establish a policy that sets clear standards of conduct.
  7. To maintain the citizen's constitutional right to petition government for redress of grievances and not to limit the public's access to their elected officials.
- C. Any person who engages in lobbying activity must comply with the provisions of this chapter.  
(Ord. 28074.)

#### 12.12.020 Exemptions.

The following persons are exempt from the requirements of this chapter unless otherwise specified:

- A. A public official acting in his or her official capacity.
- B. A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action.
- C. A person hired by the city or agency for work performed on behalf of the city or agency, or a person who prepares documents for approval by the city under the California Environmental Quality Act of 1970, as amended and Title 21 of the San Jose Municipal Code, or a person who has been specifically invited by the city council or redevelopment agency board or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or the redevelopment agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving

testimony in aid of the body or person extending the invitation or invited to attend a meeting such as a city or agency task force or department committee meeting to provide information or assistance requested by city or agency staff.

D. The owner of a business whose attempts to influence governmental action are on behalf of the business and:

1. The owner or business has not made or solicited contributions for the elected official contacted, or a candidate or independent expenditure committee at the behest of the elected official contacted, in an amount over one thousand dollars (\$1,000) within the last twelve months in a city election;
2. The owner or business has not retained a person to engage in lobbying activity on behalf of the owner or business; or
3. Officers or employees of the business have not engaged in lobbying activity on behalf of the owner or business.

For the purpose of this section, an "owner" is any individual with greater than a fifty percent interest in the business. This exemption applies only to the threshold for becoming an in-house lobbyist as defined under Section 12.12.180 B. An owner of a business who meets this exemption is subject to the requirements of this chapter if he or she meets the definition of contract lobbyist or expenditure lobbyist as defined under Sections 12.12.180 A. and 12.12.180 C., respectively.

E. A person whose attempts to influence governmental action are limited to:

1. Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; and/or
2. Preparing, processing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public.

F. Any person whose sole activity includes one or more of the following:

1. to submit a bid on a competitively bid contract;
2. to submit a written response to a request for proposals or qualifications;
3. to participate in an oral interview for a request for proposals or qualifications; or
4. to negotiate the terms of an agreement with the city or agency official authorized to negotiate such an agreement.

G. A person who meets with city officials solely to lodge "whistleblower" complaints relating to improper governmental activity such as gross mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

H. A person who meets with the city attorney or city clerk regarding any claim or litigation matter, negotiation of any agreements where the city is a party or the requirements or interpretation of this chapter.

I. Uncompensated members or uncompensated members of the board of directors of non-profit organizations.

J. Members of neighborhood associations, neighborhood advisory committees or project area committees.

K. Persons whose communications are solely related to:

1. The establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or a memorandum of agreement between the city and a recognized employee organization.
2. Management decisions as to the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of agreement between the city and a recognized employee organization.
3. Proceedings before the City of San José civil service commission.

L. A person whose communications with city officials are solely in connection with the administration of an existing contract or agreement between the person and the city or redevelopment agency.

M. Compensated officers or employees of a nonprofit organization with tax exempt status under Section 501(c)(3) of the Internal Revenue Code whose attempts to influence governmental action are on behalf of the organization.

(Ord. 28074.)

### 12.12.030 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter heretofore or hereafter adopted by the city council of the City of San José is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the chapter. Each and every section,

subsection, sentence, clause or phrase of this chapter is severable from all other sections, subsections, sentences, clauses or phrases.  
(Ord. 28074.)

## Part 2

### DEFINITIONS

#### Sections:

- 12.12.100 Definitions.**
- 12.12.110 At the behest.**
- 12.12.120 City official.**
- 12.12.130 City official-elect.**
- 12.12.140 Client.**
- 12.12.150 Contact or contacting.**
- 12.12.160 Compensated or compensation.**
- 12.12.170 Lobbying activity.**
- 12.12.180 Lobbyist.**
- 12.12.190 Lobbyist fundraising activity.**
- 12.12.200 Person.**

#### **12.12.100 Definitions.**

For purposes of this chapter, the following definitions are applicable. Other terms used and not defined in this chapter have the meanings set forth in this title, and terms used and not defined in this title have the meanings set forth in the California Political Reform Act of 1974, as amended.  
(Ord. 28074.)

#### **12.12.110 At the behest.**

“At the behest” means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective city official, city official-elect or candidate for elective city office.  
(Ord. 28074.)

#### **12.12.120 City official.**

“City official” includes the mayor and members of the city council; any appointee of the city council; mayoral or council staff member; redevelopment agency board member; members of the planning commission, appeals hearing board, civil service commission; any city representative to any joint powers authority to which the city is a party; the city manager and his or her assistant city manager and deputy city managers; the executive director of the

agency and his or her assistant and deputies; city department heads; and agency division heads.  
(Ord. 28074.)

#### **12.12.130 City official-elect.**

“City official-elect” means a person who has been elected to a city office but has not yet been sworn in to office.  
(Ord. 28074.)

#### **12.12.140 Client.**

“Client” means the person who compensates a lobbyist for representation.  
(Ord. 28074.)

#### **12.12.150 Contact or contacting.**

“Contact or contacting” means attendance at a meeting with a city official or city official-elect, or any direct communication with a city official or city official-elect, whether oral, electronic or in writing, including, but not limited to communication through an agent, associate or employee, for the purpose of engaging in lobbying activity.  
(Ord. 28074.)

#### **12.12.160 Compensated or compensation.**

“Compensated or compensation” means any economic consideration for services rendered or to be rendered in the future, including, without limitation, payment, distribution transfer, loan advance, deposit, other rendering of money, property, services or anything else of value.  
(Ord. 28074.)

#### **12.12.170 Lobbying activity.**

“Lobbying activity” means influencing or attempting to influence a city official or city official-elect with regard to a legislative or administrative action of the city or redevelopment agency.

- A. “Influencing” means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions of the city official or city official-elect, by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.
- B. “Legislative action” means the drafting, introduction, consideration, modification,

enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination or other action of the mayor, city council, redevelopment agency of the city, or city board or commission, or task force or any joint powers authority of which the city is a party.

- C. “Administrative action” means the proposal, drafting, development, consideration, advocacy, recommendation, adoption, amendment or approval of any rule, regulation, agreement, contract, permit, license or hiring action.

(Ord. 28074.)

#### **12.12.180 Lobbyist.**

“Lobbyist”, unless exempt under Section 12.12.020 means:

- A. Contract lobbyist: Any person, whether an entity or individual, that engages in lobbying activity on behalf of one or more clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for compensation of one thousand dollars (\$1,000) or more for any services which include engaging in lobbying during any consecutive three month period.
- B. In-house lobbyist: Any person, including a business, corporation, association, political action committee, or any other organization if its owners, officers, or employees have engaged in lobbying activity on its behalf and whose aggregate time engaging in lobbying activity total ten hours or more in a consecutive twelve month period.
- C. Expenditure lobbyist: A person who makes payments or incurs expenditures in the aggregate amount of five thousand dollars (\$5,000) or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging, directly or indirectly, other persons to communicate directly with any city official in order to attempt to influence a legislative or administrative action. The five thousand dollars (\$5,000) threshold does not include:
1. Compensation paid to contract lobbyists or in-house lobbyists for lobbying activity; or
  2. Dues, donations, or other economic consideration paid to an organization, regardless of whether the dues, donations or other economic consideration are used in whole or in part for lobbying activity.

(Ord. 28074.)

#### **12.12.190 Lobbyist fundraising activity.**

“Lobbyist fundraising activity” means soliciting a contribution; hosting or sponsoring a fundraising event; or hiring a fundraiser or contractor to conduct any event designed for political fundraising at which contributions for any city official, candidate for elective city office or any controlled committee of an elected city official or candidate for city office or for any political action committee, political party or candidate for elective office of a governmental organization are solicited, delivered or made.

(Ord. 28074.)

#### **12.12.200 Person.**

“Person” means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

(Ord. 28074.)

### **Part 3**

## **CONTINGENT COMPENSATION TO LOBBYISTS**

### **Sections:**

#### **12.12.300 Contingent compensation.**

#### **12.12.310 Disclosure of contingent compensation.**

#### **12.12.320 Separate written agreements.**

#### **12.12.330 Exemptions.**

#### **12.12.300 Contingent compensation.**

- A. A person may not accept compensation for lobbying activity when the compensation is directly dependent on the result of legislative or administrative action(s) that are the subject of the lobbying activity.
- B. A person may not accept compensation for engaging in lobbying activity when the compensation depends on both:
1. The result of legislative or administrative action(s) that are the subject of the lobbying activity; and
  2. Additional condition(s) or event(s) that are not the subject of the lobbying activity.
- C. A person engaged in lobbying activity may accept compensation for services, other than lobbying activity, when the compensation directly depends on the result of legislative or administrative

action(s) that are the subject of the lobbying activity.

- D. A person engaged in lobbying activity may accept compensation for services, other than lobbying activity, when the compensation depends on both:
1. The result of legislative or administrative actions that are the subject of the lobbying activity; and
  2. Additional condition(s) or event(s) that are not the subject of the lobbying activity.

(Ord. 28074.)

**12.12.310 Disclosure of contingent compensation.**

- A. A person engaged in lobbying activity must disclose any agreement, arrangement, or understanding regarding compensation for services set forth in Section 12.12.300 C. and D.
- B. Except as provided in subsection C., a person engaged in lobbying activity must file with the city clerk at least one business day before any lobbying activity, the following information:
1. Name, address, and telephone number of the person engaged in lobbying activity.
  2. Name and address of the source of compensation.
  3. A brief description of the legislative or administrative action the person engaged in lobbying activity is seeking to influence.
  4. If compensation can be calculated at the time of the disclosure, the compensation within the following ranges: (\$0.00 - \$500), (\$501 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), (\$100,001 - \$200,000), (\$200,001 - \$300,000), (\$300,001 - \$400,000), and (over \$400,000).
  5. If compensation cannot be calculated at the time of the disclosure, a brief description of the basis for determining the compensation, and any legislative or administrative action(s) and/or additional condition(s) or event(s) that must occur before the person engaged in lobbying activity is entitled to receive compensation.
- C. A person engaged in lobbying activity that is not yet required to register as a lobbyist as defined under Section 12.12.180 may file the disclosure form concurrent with the registration report.

(Ord. 28074.)

**12.12.320 Separate written agreements.**

A person engaged in lobbying activity may have separate written agreements for lobbying activity and other services related to the same project or issue. (Ord. 28074.)

**12.12.330 Exemptions.**

Sections 12.12.300 and 12.12.310 do not apply to compensation for services by an attorney licensed to practice law in the state of California who represents a party or potential party in pending or actual litigation or administrative enforcement proceeding brought by or against the city. (Ord. 28074.)

**Part 4**

**REQUIREMENTS**

**Sections:**

**12.12.400 Registration with city clerk.**

**12.12.410 Lobbyist registration report.**

**12.12.420 Additional required information and disclosures.**

**12.12.430 Quarterly reports.**

**12.12.440 Fees.**

**12.12.400 Registration with city clerk.**

- A. A lobbyist is required to register with the city clerk no later than ten days after qualifying as a lobbyist as defined in this chapter. A lobbyist who meets the threshold requirements of one or more of the categories (contract lobbyist, in-house lobbyist, or expenditure lobbyist) is only required to register once.
- B. A lobbyist must renew the registration by January 15 of each year.
- C. The annual registration renewal will not be required if a declaration attesting to the termination of lobbying activity within the city has been filed with the city clerk no later than January 15.

(Ord. 28074.)

**12.12.410 Lobbyist registration report.**

- A. A lobbyist who meets the threshold requirements of one or more of the categories (contract lobbyist, in-house lobbyist, or expenditure lobbyist) must fill out one registration report

with all the applicable information including the following:

1. Name.
  2. Business address.
  3. Telephone and fax numbers.
  4. Names of all owners if the lobbyist is a sole proprietorship or partnership of fewer than five persons.
  5. Names of the officers and agent for service of process, if any, if the lobbyist is a corporation.
  6. If applicable, a description of the nature of, the business, corporation, association, committee or any other organization in sufficient detail to inform the reader of its nature and purpose.
- B. All contract lobbyists must also provide the following information for each client:
1. Name, business address, telephone number of each client;
  2. Nature of each client's business;
  3. A brief description of the legislative or administrative action(s) the lobbyist seeks to influence on behalf of each client; and
  4. Name of each person employed or retained by the lobbyist to engage in lobbyist activity on behalf of each client.
- C. All in-house lobbyists must also provide the following information:
1. Names of each owner, officer and employee conducting lobbying activities on its behalf; and
  2. A brief description of the legislative or administrative action(s) the lobbyist seeks to influence.
- D. All expenditure lobbyists must also provide the following information:
1. Names of all owners, officers and employees conducting lobbying activities; and
  2. A brief description of the legislative or administrative action(s) the lobbyist seeks to influence.

(Ord. 28074.)

#### **12.12.420 Additional required information and disclosures.**

The lobbyist registration report must also contain the following information:

- A. Campaign and officeholder contributions that a lobbyist made, delivered or acted as an

intermediary for, to an elected city official or candidate for city office made during the preceding calendar quarter. A person is an "intermediary" for a contribution if the recipient of the contribution would consider that person to be the contributor without the disclosure of the identity of the true source of the contribution. Also, a lobbyist acts as an "intermediary" if the lobbyist makes a contribution on behalf of another person, and that other person is acknowledged as the contributor, and the lobbyist is reimbursed for the contribution.

- B. Campaign and officeholder contributions made at the behest of an elected city official or candidate to any other elected public official or candidate for public office during the preceding calendar quarter.
- C. All Independent expenditures made for or on behalf of a city official or candidate for city office made during the preceding calendar quarter.
- D. Fundraising activity for any city official, candidate for elective city office or any controlled committee of the elected city official or candidate for city office or for any political action committee, political party or candidate for elective office of a governmental organization made at the behest of a city official during the preceding calendar quarter. Required information and disclosures must include the name of the city official, candidate, committee or party on whose behalf the lobbyist engaged in fundraising activities, or delivered or acted as intermediary for one or more contributions. The information and disclosures must also include the name of the city official requesting the fundraising activity, the date of the fundraising activity, the name of the contributors and the amount of contributions raised, delivered and/or made in connection with which the lobbyist acted as an intermediary.
- E. Donations to for profit or nonprofit organizations made at the behest of a city official or candidate for elective city office of any contribution or payment of more than one thousand dollars (\$1,000) in the aggregate made during the preceding calendar quarter.
- F. Payments received for services as a consultant or in any other capacity for services rendered to any city department or redevelopment agency, city official, or any city official-elect, their controlled committees or officeholder committees.



- G. Contacts made with city officials or city officials-elect during the preceding calendar quarter for the purpose of influencing or attempting to influence legislative or administrative action. Contact information must include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts in the following ranges: (1), (2 - 5), (6 - 10) or (11 or more).
- H. Activity expenses such as payments that directly benefit any city official, city official-elect or member of his or her immediate family or domestic partner made during the preceding calendar quarter. Activity expenses include gifts as defined by Chapter 12.08, honoraria, consulting fees, salaries and other forms of compensation, but do not include campaign contributions.

(Ord. 28074.)

#### **12.12.430 Quarterly reports.**

- A. All lobbyists must file a quarterly report for every calendar quarter during which they retain that status with the city clerk not later than fifteen calendar days after the end of the qualifying quarter, whether or not any lobbying activities have occurred during such period. Electronic reporting may also be permitted by the city clerk.
- B. Each quarterly report must contain the same information as required to be disclosed in the registration report, for those activities occurring in that quarter. If a lobbyist has terminated all lobbying activities during such quarter, the lobbyist may file a declaration of termination with the quarterly report. The final quarterly report must include disclosure of any lobbying activities during the quarter of termination.
- C. Each quarterly report for contract lobbyists must indicate the total compensation promised or received from each client listed during the reporting period for lobbying activity within the following ranges: (\$0.00 - 500), (\$501 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), (\$100,001 - \$200,000), (\$200,001 - \$300,000), (\$300,001 - \$400,000), and (Over \$400,001).
- D. Each quarterly report must indicate whether the lobbyist has any agreement, arrangement, or understanding regarding compensation for

services set forth in Section 12.12.300 C. and D. for those activities occurring in that quarter and identify the name of the person that filed the disclosure form and the date it was filed with the city clerk.

- E. Quarterly reports must be filed by April 15, July 15, October 15 and January 15 for the prior calendar quarter, and are delinquent thereafter.
  - F. Records pertaining to the registration and quarterly reports must be preserved by the lobbyist for inspection and audit by the city for a period of five years from the date of production.
- (Ord. 28074.)

#### **12.12.440 Fees.**

- A. All fees and interest referenced in this section are set forth in the schedule of fees established by resolution of the city council.
- B. All lobbyists are required to register, including expenditure lobbyists or contract lobbyists that work for an in-house lobbyist, and pay an annual registration fee at the time of registration or registration renewal. If the lobbyist registers for the first time on or after June 30 of a given year, the lobbyist may pay a reduced registration fee. If the fee is not paid at the time of registration or registration renewal, a late registration fee will be assessed on a daily basis until the registration fee is paid in full. In no event will the late registration fee exceed one hundred percent of the unpaid registration fee.
- C. Every contract lobbyist must pay a fee for each client for whom lobbying activity is undertaken for compensation and the compensation is greater than five hundred dollars (\$500) per client. The fee for each client must be paid on an annual basis with the registration or registration renewal. After the registration or registration renewal, the fee for any new client must be paid with the quarterly report immediately following the quarter when the lobbyist is compensated and the compensation is greater than five hundred dollars (\$500). (Lobbyists for organizations representing a group of organizations or associations such as trade associations will not be assessed a fee for each client if the compensation to the lobbyist is derived from fees or dues members pay for their membership in the organization or association.)

- D. Any lobbyist who fails to file a quarterly report or files a quarterly report after the report is due under Section 12.12.430 will be assessed a late filing fee. Interest calculated on a monthly basis or a fraction thereof will accrue on the late filing fee from the date the fee is due to the date the fee is paid. If more than one fee is due, interest will accrue separately upon each fee.
  - E. Failure to pay any fees and interest assessed in this Section may be enforced as a personal obligation of the lobbyist.
- (Ord. 28074.)

- G. Contact any city or agency employee, or members of an evaluation team or panel for a city or redevelopment agency request for proposal or request for qualifications concerning a city or redevelopment agency request for proposal or request for qualifications, other than a city or agency designated contact person, during the period of time from the release to prospective proposers of the request for proposal or request for qualification until a recommendation is made public by the city or agency.
- (Ord. 28074.)

### Part 5

#### PROHIBITED ACTIVITIES

##### Sections:

##### **12.12.500 Prohibited activities.**

##### **12.12.500 Prohibited activities.**

No person engaged in lobbying activity may commit any of the following acts:

- A. Engage in any activity on behalf of a client or accept compensation for lobbying activity unless such lobbyist is registered and has filed the information required by this chapter.
- B. Do any act to place any city official or immediate family member of a city official under his or her personal or financial obligation.
- C. Intentionally deceive or attempt to deceive a city official as to any material fact which is pertinent to any pending or proposed legislative or administrative action.
- D. Contact any public official in the name of any non-existent person or in the name of any existing person except with the consent of such existing person.
- E. Represent, either directly or indirectly, orally or in writing that he or she can control or obtain the vote or action of any city official.
- F. Perform services for a client on a matter including any legislative action or administrative action for a period of two years after which the lobbyist had performed services on such matter as a consultant for the City of San José or redevelopment agency.

### Part 6

#### COMPLIANCE, TRAINING, AND ENFORCEMENT

##### Sections:

##### **12.12.600 Compliance and training.**

##### **12.12.610 Enforcement.**

##### **12.12.620 Noncompliance - Order to show cause.**

##### **12.12.630 Penalties.**

##### **12.12.600 Compliance and training.**

- A. The city clerk oversees compliance with this chapter, including the creation of all forms and explanatory materials.
- B. A training workshop will be established for elected city officers and lobbyists on city ethics ordinances and a code of ethics for lobbyists. The city clerk establishes a program of required attendance on a regular basis not less than once every three years. Training workshops will be provided to newly elected city officials.

(Ord. 28074.)

##### **12.12.610 Enforcement.**

- A. The city attorney may investigate complaints of violations of this chapter. The city attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.
- B. Any person may file a complaint with the city clerk alleging a violation of this chapter with the elections commission.

- C. The city attorney or the city clerk may put lobbyists on notice of a potential violation of the requirements of this chapter, whether or not a complaint is filed with the elections commission.
- D. Any person may request the city attorney to provide written advice with respect to the person's duties under the provisions of this chapter. The city attorney must provide the advice within twenty-one working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding before the elections commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requestor, at least twenty-one working days before the alleged violation, requested written advice from the city attorney in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the city attorney to provide advice within twenty-one days of the request or such later extended time.

(Ords. 28074, 28660.)

#### **12.12.620 Noncompliance - Order to show cause.**

- A. Upon the written request of any city official, the city clerk will issue an order to show cause to any unregistered person.
- B. Such order must specify a time and place where such person must appear to provide evidence satisfactory to the elections commission that he or she has complied with the registration requirement or is exempt from registration.
- C. If the elections commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, such person will be barred from appearing before city council or the redevelopment agency board except at a public hearing on his or her own behalf or on oral petition. Such debarment will be in effect for three months from the date of such determination or until registration, whichever is later.

(Ord. 28074.)

#### **12.12.630 Penalties.**

Each violation of this chapter may result in civil penalties of up to five thousand dollars (\$5,000) or the

amount of the compensation received for the lobbying activity, whichever is greater may be assessed by the elections commission or a court of law.  
(Ord. 28074.)

### **Part 7**

#### **PROHIBITION FOR CITY OFFICIALS**

##### **Sections:**

##### **12.12.700 Prohibition for city officials.**

##### **12.12.700 Prohibition for city officials.**

City officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action by the city or redevelopment agency with regard to such person's matter pending before the city or redevelopment agency.  
(Ord. 28074.)

### **Part 8**

#### **DISCLOSURE OF COMMUNICATIONS WITH REGISTERED LOBBYISTS**

##### **Sections:**

##### **12.12.800 Disclosure of communications with registered lobbyists.**

##### **12.12.800 Disclosure of communications with registered lobbyists.**

Before taking any legislative or administrative action, the mayor, each member of the city council, the chair and each member of the San José redevelopment agency board of directors, and each member of the planning commission, civil service commission, or appeals hearing board must disclose all scheduled meetings and telephone conversations with a registered lobbyist about the action. The disclosure may be made orally at the meeting before discussion of the action on the meeting agenda. The oral disclosure must identify the registered lobbyists, the date(s) of the scheduled meetings and telephone

conversations, and the substance of the communication. This section does not limit any disclosure obligations that may be required by this code or city policy.  
(Ord. 28074.)

### **Chapter 12.14**

#### **CONCURRENT EMPLOYMENT OF CITY COUNCIL MEMBERS OR CITY OR AGENCY EMPLOYEES**

##### **Sections:**

##### **12.14.010 Disclosure of concurrent employment.**

##### **12.14.010 Disclosure of concurrent employment.**

- A. Any employer shall disclose concurrent employment, in any capacity, of any officer of the city, redevelopment agency or any full-time employee of the city or agency when:
1. The employer is a local governmental lobbyist; or
  2. The employer is a client of a lobbyist, who made the offer of employment based on the request or recommendation of the lobbyist and with knowledge that such employment was concurrent.
- B. Within ten days after such concurrent employment commences, such employer shall file a statement with the city clerk, setting out the nature of the employment, the name of the person so employed, the amount of pay or consideration to be paid, and the date such employment commenced.

(Ord. 24499.)

### **Chapter 12.15**

#### **PROSPECTIVE EMPLOYMENT**

##### **Sections:**

##### **12.15.010 Persons subject to the chapter.**

##### **12.15.020 Prospective employers.**

##### **12.15.030 Prospective employment.**

##### **12.15.040 Applicability.**

##### **12.15.050 Negotiation disclosure requirement.**

##### **12.15.060 Employment offer disclosure and attestation requirements.**

##### **12.15.070 Participation prohibition.**

##### **12.15.080 Confidentiality.**

##### **12.15.010 Persons subject to the chapter.**

- A. The negotiation disclosure provisions of this chapter as set forth in Section 12.15.050 shall apply to the following groups:
1. Elected officers;
  2. Council appointees and the executive director of the redevelopment agency;
  3. Directors of city departments, assistant city managers, and deputy city managers;
  4. Assistant directors to council appointees and assistant redevelopment agency executive director.
- B. The employment offer disclosure and attestation requirements of this chapter as set forth in Section 12.15.060 shall apply to the following persons:
1. Board and commission members;
  2. Managers who are determined by their appointing authority to exercise critical decision making or program management responsibility;
  3. Council assistants; and
  4. Redevelopment agency senior staff.

(Ord. 25340.)

##### **12.15.020 Prospective employers.**

- A. For purposes of this chapter, prospective employers include individuals, firms, companies, organizations, private and public agencies, excepting only the city and the redevelopment agency.
- B. Prospective employer includes not only the employing entity, but also all principals of that entity including all persons with ownership interests in that entity.

(Ord. 25340.)

##### **12.15.030 Prospective employment.**

- A. For purposes of this chapter, with regard to persons listed in subsection A. of Section 12.15.010, prospective employment includes offers, discussions, negotiations or agreements with regard to future employment, with any prospective employer, except for offers received which are rejected immediately upon being made.

- B. For purposes of this chapter, with regard to persons listed in subsection B. of Section 12.15.010, prospective employment includes offers or agreements with regard to future employment, with any prospective employer, except for offers received which are rejected immediately upon being made.

(Ord. 25340.)

**12.15.040 Applicability.**

- A. This chapter shall apply to prospective employment where it is reasonably foreseeable that the financial interests of the prospective employer could be materially impacted or affected, in a manner different from that of the public-at-large, by the decisions influenced or made by the person subject to this chapter or any issues or matters before the city which are being actively lobbied by the prospective employer could be influenced or affected by the person subject to this chapter.

(Ord. 25340.)

**12.15.050 Negotiation disclosure requirement.**

- A. Any person subject to subsection A. of Section 12.15.010 of this chapter who is entertaining offers, discussion or negotiations or who has an agreement for prospective employment with an applicable prospective employer shall file a prospective employment disclosure statement on a form provided by the city attorney.
- B. A copy of the prospective employment disclosure statement shall be filed with the city attorney within three working days following the occurrence of prospective employment as defined in Section 12.15.030 above.
- C. In addition, a copy of the prospective employment disclosure statement must be filed simultaneously with the notification recipient designated below.
  - 1. The notification recipient for council appointees and the executive director of the redevelopment agency shall be the mayor.
  - 2. The notification recipient for all others shall be their appointing authority.
- D. The disclosure requirements in this section shall not apply to any client or prospective client of a councilmember, where the identity of a client is actually and legally required to be maintained as confidential.

(Ord. 25340.)

**12.15.060 Employment offer disclosure and attestation requirements.**

- A. Any person subject to subsection B. of Section 12.15.010 of this chapter who has received an offer for prospective employment with an applicable prospective employer shall file a prospective employment disclosure statement on a form provided by the city attorney.
- B. A copy of the prospective employment disclosure statement shall be filed with the city attorney within three working days following the occurrence of prospective employment as defined in Section 12.15.030 above.
- C. In addition, a copy of the prospective employment disclosure statement must be filed simultaneously with the notification recipient designated below:
  - 1. The notification recipient for board and commission members shall be the secretary of the board or commission.
  - 2. The notification recipient for all employees subject to this chapter shall be their appointing authority. For purposes of this provision, each member of the council shall be deemed the appointing authority for his or her assistants.
- D. The disclosure requirements in this section shall not apply to any client or prospective client of a board or commission member, where the identity of a client is actually and legally required to be maintained as confidential.
- E. In addition, all persons subject to this section shall sign a statement, on a form prepared by the city attorney, attesting that they will not use their city position, information or knowledge acquired in their employment with the city to influence employment offers or to advantage prospective employers who currently or potentially do business with the city. The statement shall include a commitment to avoid all appearances of conflicts of interest and avoid potential conflicts of interest. It shall be filed with the notice recipient designated in subsection C. above.

(Ord. 25340.)

**12.15.070 Participation prohibition.**

- A. No person subject to this chapter shall participate in any decision substantially or directly involving the financial interest of a prospective employer for whom disclosure is required by this chapter or any issues or matters before the city which are being actively lobbied by such prospective employer.

- B. This prohibition shall remain in full force and effect until both of the following have occurred:
1. A period of six months after all prospective employment negotiations have terminated and a final decision has been made that such employment will not occur; and
  2. The city attorney and the notification recipient have been advised that consideration of employment has been terminated.

(Ord. 25340.)

**12.15.080 Confidentiality.**

- A. The prospective employment disclosure statement shall be maintained as confidential to the greatest extent provided by law until:
1. The person filing the statement has left city/agency employ; or
  2. The participation prohibition period has ended; or
  3. The person filing the statement has indicated that there is no need for confidentiality; or
  4. The prospective employer has publicly disclosed the prospective employment; or
  5. The city attorney determines that there is no longer justification for withholding the statement from disclosure in that the public interest served by not making the record public does not clearly outweigh the public interest served by disclosure of the statement.
- B. Upon the occurrence of any of the events above, the statement shall be treated as a public record.
- (Ord. 25340.)

**Chapter 12.16**

**DISCLOSURE OF FUND-RAISING SOLICITATIONS**

**Sections:**

- 12.16.010 Persons subject to the chapter.**
- 12.16.020 Disclosure requirements - Fund-raising solicitations.**
- 12.16.030 Fund-raising solicitation(s).**
- 12.16.040 Reporting requirements.**
- 12.16.050 Political reform act requirements - Informational.**

**12.16.010 Persons subject to the chapter.**

- A. The disclosure provisions of this chapter shall apply to elected officials of the City of San José who are the mayor and members of the city council and the chair and members of the San José redevelopment agency board of directors and their controlled committees.
- B. For purposes of this chapter, “elected official” means the mayor, each member of the city council, the chair and each member of the San José redevelopment agency board of directors.

(Ord. 27377.)

**12.16.020 Disclosure requirements - Fund-raising solicitations.**

- A. Each elected official and their controlled committees shall disclose any direct fund-raising solicitation(s) which resulted in a contribution or donation in any dollar amount or value, made at the behest of or at the request of, the elected official to any person or entity, including, but not limited to the following:
1. Donations of funds, goods, or services to, or, payment of funds on behalf of any religious, charitable, nonprofit, governmental or political organization, association, committee or entity, including the City of San José and the redevelopment agency of the City of San José;
  2. Donations of funds, goods, or services to, or payment of funds on behalf of another elected official, city candidate, city ballot measure, elected public official or candidate for elective office or any other campaign committee.
- B. For purposes of this chapter, “made at the behest or at the request of” means at the specific direction of or at the personal request or suggestion of, or with the express prior consent of any elected official.
- (Ord. 27377.)

**12.16.030 Fund-raising solicitation(s).**

- A. For purposes of this chapter, “direct fund-raising solicitation(s)” means:
1. A personal request, made directly by the elected official or at the behest of, the elected official or through an agent, either orally or in writing, to a person or entity that a contribution or donation be made from:

- a. A person or entity who is doing business with, involved with or working on any governmental, administrative or legislative action with or before the City of San José or the San José redevelopment agency within one year before or after the date of the request; or
  - b. A person or entity who has been or may foreseeably be involved with or working on any governmental, administrative or legislative action with or before the City of San José or the San José redevelopment agency within one year before or after the date of the request.
2. Providing the use of the elected official's home or business to hold a fund-raising event;
  3. Payment by the elected official for at least a majority of the costs of a fund-raising event.
- B. "Direct fund-raising solicitation(s)" does not include:
1. A request by the elected official for funds publicly to at least a majority of persons who attend any public gathering, or by making a request that appears or is published in a newspaper, or broadcasted on radio or television; or
  2. Supplying names by the elected official to be used for invitations for a fund-raising event; or
  3. Recorded telephone solicitations or participation in telephone banks by the elected official; or
  4. Inclusion of the elected official's name in the letterhead or in the body of a solicitation letter requesting contributions or donations but which is not sent by or signed by the elected official; or
  5. Inclusion of the elected official's name in an invitation to a private event or meeting which is not hosted, co-hosted or sponsored by the elected official.
- C. For purposes of this chapter, a "fund-raising event" means an event at which contributions or donations are solicited from, delivered or made by a person or entity who is doing business with, involved with or working on any governmental, administrative or legislative action with or before the City of San José or the San José

redevelopment agency within one year before or after the date of the request or a person or entity who has been or may foreseeably be involved with or working on any governmental, administrative or legislative action with or before the City of San José or the San José redevelopment agency within one year before or after the date of the request.  
(Ord. 27377.)

#### **12.16.040 Reporting requirements.**

- A. Elected officials shall file fundraising disclosure reports which include the information specified in this section with the city clerk. Reports filed pursuant to this section shall be public records.
- B. The disclosure reports shall include the following information:
  1. Name of the elected city official;
  2. Name, address, occupation and employer of the contributor or donor;
  3. Date(s) of the direct fundraising solicitation(s);
  4. Brief description of the solicitation(s), behest(s) or request(s) including the dollar value or fair market value of goods or services solicited or requested and;
  5. Date(s) and amount(s) of the reportable contribution(s), or donation(s) that resulted from the city official's direct request(s) as set forth in Section 12.16.030 A.1.
- C. Reports shall be filed no later than January 15, April 15, July 15 and September 15 for fundraising solicitations and reportable contributions or donations that resulted from fundraising solicitations for the preceding calendar quarter.
- D. The city clerk shall be the filing officer for the reports and will be responsible for the preparation of forms and explanatory materials.  
(Ords. 27377, 28281.)

#### **12.16.050 Political reform act requirements - Informational.**

- A. As of the date of enactment of this Chapter 12.16, the Political Reform Act of 1974, as amended, requires elected officials to disclose payments made at their behest for legislative, governmental or charitable purposes aggregating five thousand dollars or more from the same source in a calendar year. (California Gov. Code Section 82015(b)(2)(B)(iii)).

- B. The Political Reform Act and Chapter 12.06 of the San José Municipal Code require reporting and disclosure of campaign and officeholder contributions and funds for elected officials.
- C. The requirements of this Chapter 12.16 shall not apply to campaign and officeholder contributions and funds for elected officials.  
(Ord. 27377.)

## Chapter 12.18

### REMOVAL FROM OFFICE

#### Parts:

- 1 Purpose
- 2 Definitions
- 3 Grounds for Removal, Initiation of Proceedings
- 4 Removal Hearing

#### Part 1

### PURPOSE

#### Sections:

#### 12.18.010 Purpose.

#### 12.18.010 Purpose.

This chapter implements the ground and process for removal of a member of the city council pursuant to Charter Section 405. The purpose of the proceeding established in this chapter is to determine whether the member should be allowed to continue in his or her capacity as an elected official of the City of San José and not to determine whether the member is guilty of a crime. The principal objective of the proceeding is to protect the City of San José and the public which it serves from persons unfit to hold elective office as a member of the city council. The removal process set forth in this chapter is the most severe response to misconduct in office and should be exercised only for the most egregious and serious offenses.  
(Ord. 27925.)

## Part 2

### DEFINITIONS

#### Sections:

- 12.18.200 Definitions.**  
**12.18.210 Member of council.**  
**12.18.220 Misconduct in office.**  
**12.18.230 Rules committee.**  
**12.18.240 Subject member.**  
**12.18.250 Willful.**

#### 12.18.200 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.  
(Ord. 27925.)

#### 12.18.210 Member of council.

“Member of council” means any of the members of the city council including the mayor as provided in Charter Section 1704.  
(Ord. 27925.)

#### 12.18.220 Misconduct in office.

“Misconduct in office” means an egregious and serious wrongful or unlawful act, lawful act performed in a wrongful manner, or a failure to act when a duty to act existed, that is taken in his or her official capacity or in relation to the duties of office. For purposes of this chapter, members of council have a duty to abide by federal and state law, city charter, city ordinances, and city policies, including conflict of interest or governmental ethics laws.  
(Ord. 27925.)

#### 12.18.230 Rules committee.

“Rules committee” means the committee of the city council established as the rules committee by City Council Resolution No. 73321, as such resolution may be amended or superseded.  
(Ord. 27925.)

#### 12.18.240 Subject member.

“Subject member” means the member of council who is the subject of the request for removal from office.  
(Ord. 27925.)



**12.18.250 Willful.**

“Willful” means a purpose or willingness to commit the act or to not act with knowledge of a duty to act. Willfulness does not require knowledge that the act violates the law, or intent to violate the law, injure another or to acquire any advantage.

(Ord. 27925.)

**Part 3****GROUND FOR REMOVAL, INITIATION OF PROCEEDINGS****Sections:****12.18.300 Grounds for removal.****12.18.310 Recall result in termination of removal proceedings.****12.18.320 Request for removal.****12.18.330 Service of removal allegations.****12.18.340 Rules committee review.****12.18.350 Investigation committee.****12.18.360 Investigation.****12.18.370 City council review of committee report.****12.18.300 Grounds for removal.**

The city council may remove a member of council from office for willful misconduct in office pursuant to the provisions of this chapter.

(Ord. 27925.)

**12.18.310 Recall result in termination of removal proceedings.**

All proceedings under this chapter shall terminate and cannot be reinstated if at any point during the process, a recall of a member of council has been initiated, pursuant to Charter Section 1603, and the county registrar of voters issues a certificate of sufficiency for the petition pursuant to Elections Code Sections 11224 and 11225, as may be amended.

(Ord. 27925.)

**12.18.320 Request for removal.**

A. A member of council may initiate a request for removal hearing by submitting the request in writing to the rules committee. Only a member of council may make this request.

B. The request must contain the specific allegations of willful misconduct in office upon which the proposed removal is based.

C. The city clerk shall place the request on the agenda of the second regularly scheduled rules committee meeting following receipt of a request with specific allegations.

(Ord. 27925.)

**12.18.330 Service of removal allegations.**

A copy of the request for removal and the specific allegations shall be served on the subject member by personal service at least five business days prior to the rules committee meeting at which it will be considered. The subject member shall have the right to appear and address the rules committee.

(Ord. 27925.)

**12.18.340 Rules committee review.**

A. At the rules committee meeting at which the removal request is considered, the rules committee shall recommend one or more of the following:

1. Investigation of the allegations in the request is warranted for consideration of removal assuming the allegations are true and could be deemed willful misconduct in office under state law;
2. The recommended level of action is admonition, sanction and/or censure pursuant to City Council Conduct Policy (0-28), as may be amended; or
3. No action is warranted.

B. The rules committee shall set forth the reasons for its recommendation in a report to the city council.

C. The determination of the rules committee on the removal request shall be subject to confirmation by the city council as part of the rules committee report. The city clerk shall place the rules committee report on the agenda of a regularly scheduled city council meeting within thirty days of the rules committee meeting.

D. The city council may by resolution confirm the recommendation of the rules committee or determine that another action enumerated in Subsection a be taken. The city council shall set forth the reasons for its determination in the resolution. The resolution of the city council requires the affirmative vote of no less than six members of the city council.

(Ord. 27925.)

**12.18.350 Investigation committee.**

- A. The investigation of the removal request shall be undertaken by a committee. The committee members shall be appointed by the mayor, or the vice mayor if the mayor is the subject of the removal request. If both the mayor and vice mayor are the subject of the removal hearing, then the members of council remaining shall by a simple majority of no less than six affirmative votes appoint the committee members. The appointments shall be confirmed by the city council.
  - B. The committee shall be comprised of not less than five and no more than seven members. One member of the committee shall be an attorney in good standing with the California State Bar, and one member of the committee shall have held elective government office.
  - C. Each member of the investigation committee shall comply with the following qualifications during his or her tenure on the committee:
    - 1. Each member shall be a qualified elector of the City of San José.
    - 2. No member may participate in any campaign supporting or opposing a candidate for city elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions, publicly endorsing or urging endorsement of a candidate, or participating in decisions by organizations to participate in a campaign.
    - 3. No member may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant.
    - 4. No member may hold employment with the city, redevelopment agency, or any member of the city council outside of city employment.
    - 5. No member may hold any other city office.
    - 6. No member may become a candidate for city elective office during his or her tenure on the committee, and for twelve months thereafter.
- (Ord. 27925.)
- 12.18.360 Investigation.**
- All of the following shall apply to committee investigations:
- A. The committee may be staffed by administrative, investigative, and legal staff. Legal staff shall be outside counsel retained by the city council to investigate the allegations and serve as the prosecutor in a removal hearing.
  - B. If authorized by the city council, the committee may subpoena witnesses and documents.
  - C. If requested by the city council, the committee may determine whether a member of the city council is disqualified from participating in the removal proceedings due to actual bias or a high probability of actual bias.
  - D. In formulating its recommendation to the city council at the culmination of the investigation, the committee shall determine if there are reasonable grounds to believe or not believe that the conduct, violation, or offense occurred based on all the facts and evidence obtained by and available to the committee.
  - E. The city clerk shall place on the agenda of regularly scheduled city council meeting a status report on the progress of the investigation by the committee within thirty days of the committee's appointment by the city council.
  - F. The committee shall issue a final report and recommendation to the city council. The final report shall include but is not limited to all of the following:
    - 1. A statement of the facts and allegations leading to the investigation;
    - 2. A summary of the evidence reviewed and relied upon for the recommendation;
    - 3. A statement of the applicable laws and policies;
    - 4. An analysis applying the evidence to the applicable laws and policies; and
    - 5. A conclusion setting forth the committee's findings and recommendation.
  - G. The city clerk shall post the final report of the committee on the city's website no later than three business days after the committee issues the report.
  - H. The meetings of the committee shall be subject to the Ralph M. Brown Act, California Government Code Section 54950 et seq., as may be amended.
  - I. All the documents received by the committee shall be retained by the city in accordance with the city clerk's records retention schedule and shall be subject to disclosure pursuant to the Public Records Act, California Government Code Section 6250 et seq., as may be amended.
- (Ord. 27925.)

**12.18.370 City council review of committee report.**

- A. After consideration of the final report from the committee, the city council shall determine one or more of the following:
  - 1. Further investigation of the allegations in the removal request is warranted;
  - 2. The removal request is to be set for a public hearing;
  - 3. The recommended level of action is admonition, sanction and/or censure pursuant to City Council Conduct Policy (0-28), as may be amended; or
  - 4. No further action is warranted.
- B. If the city council determines that further investigation of the allegations in the removal request is warranted, the council shall specify the additional information sought and a due date for the additional information to be presented to the council.
- C. If the city council sets the matter for a public hearing, it shall direct the city clerk to serve the subject member by personal service with a notice of hearing and all documents received by the committee. The notice of hearing shall include:
  - 1. A statement of the nature of the proceeding;
  - 2. A statement in ordinary concise language of each act or omission upon which the request for removal is based; and
  - 3. A statement advising the subject member of his or her right to appear and present a defense as set forth in this chapter.

(Ord. 27925.)

**Part 4****REMOVAL HEARING****Sections:****12.18.400 Removal hearing.****12.18.410 Removal hearing procedures.****12.18.420 Findings and decision.****12.18.430 Effect of removal.****12.18.400 Removal hearing.**

Prior to a decision by the city council to remove the subject member from office, the subject member shall receive a public hearing before the city council. The hearing shall be set to provide reasonable notice

to the subject member and to provide him or her a reasonable time to prepare a defense. The hearing shall be set not less than thirty calendar days and within sixty days from the date that the notice of hearing is served on the subject member. The date for the removal hearing may be extended beyond sixty days upon a showing of good cause by either party and approval by a simple majority of no less than affirmative votes of the city council.  
(Ord. 27925.)

**12.18.410 Removal hearing procedures.**

The following shall apply to the conduct of the public hearing:

- A. The subject member may be represented and may have the representative speak, present evidence, or question witnesses on his or her behalf.
- B. The subject member and a designee of the committee shall have an opportunity to present evidence and question witnesses.
- C. The subject member and a designee of the committee shall have the ability to subpoena witnesses and documents through the city council.
- D. Oral evidence shall be taken only on oath or affirmation.
- E. The public hearing is not a formal adversarial proceeding and strict rules of evidence shall not apply. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- F. The mayor, or the vice mayor if the mayor is the subject of the allegations, shall preside at the hearing. If both the mayor and vice mayor are the subjects of the removal hearing, then the members of council remaining shall by a simple majority of no less than six affirmative votes of the city council elect a member of council to preside at the hearing.
- G. The city attorney or designee shall provide legal advice to the city council during the hearing.  
(Ord. 27925.)

**12.18.420 Findings and decision.**

- A. The city council may determine that the subject member has committed willful misconduct in office only if all members of council who are

eligible to vote find by clear and convincing evidence that such misconduct occurred. A decision to remove the subject member from office requires the adoption of a resolution at the conclusion of the hearing, by three-fourths vote of the members of council who are eligible to vote but no less than six affirmative votes of the city council setting forth the city council's findings with regard to the specific allegations.

B. The subject member is not eligible to vote.  
(Ord. 27925.)

#### **12.18.430 Effect of removal.**

Removal of a member of council will result in the office becoming vacant under Charter Section 409(e).  
(Ord. 27925.)

### **Chapter 12.19**

#### **INCOME AND TIME DISCLOSURE**

##### **Parts:**

- 1 Purpose and Interpretation**
- 2 Definitions**
- 3 Disclosure, Reporting Requirements**

##### **Part 1**

#### **PURPOSE AND INTERPRETATION**

##### **Sections:**

- 12.19.010 Purpose.**  
**12.19.020 Interpretation.**

##### **12.19.010 Purpose.**

The purposes of this chapter are to (1) provide disclosure of the time spent by elected officials in rendering services unrelated to their duties of office for which the elected official is compensated so that the public is informed of these activities; and (2) to avoid actual and apparent conflicts of interest that result from income earned by the elected official for these services.  
(Ord. 27841.)

##### **12.19.020 Interpretation.**

Except as otherwise provided in this chapter, the terms and provisions of this chapter shall be

interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, Government Code Section 81000 et seq., as amended, and the regulations of the California fair political practices commission, as amended.  
(Ord. 27841.)

##### **Part 2**

#### **DEFINITIONS**

##### **Sections:**

- 12.19.200 Definitions.**  
**12.19.210 Business entity.**  
**12.19.220 Business position.**  
**12.19.230 Governmental agency.**  
**12.19.240 Income.**  
**12.19.250 Disclosure statement.**  
**12.19.260 Elected official.**  
**12.19.270 Filing date.**  
**12.19.280 Reporting period.**  
**12.19.290 Reporting year.**

##### **12.19.200 Definitions.**

The definitions set forth in this part shall govern the application and interpretation of this chapter.  
(Ord. 27841.)

##### **12.19.210 Business entity.**

"Business entity" means any organization or enterprise including, but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, association, or nonprofit organization, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in San José, or does business or plans to do business or has done business in San José at any time during the two years prior to the date the disclosure statement is required to be filed.  
(Ord. 27841.)

##### **12.19.220 Business position.**

"Business position" means a position in any business entity in which the elected official is a director, officer, partner, trustee, employee, or holds any position of management  
(Ord. 27841.)

**12.19.230 Governmental agency.**

“Governmental agency” includes a state, local, or federal government agency.  
(Ord. 27841.)

**12.19.240 Income.**

“Income” for the purposes of this chapter shall mean payment earned for services rendered that are unrelated to the duties of office. Income may include, but not be limited to, salary, wages, tips, professional fees, commissions, contingency fees, success fees, bonuses or awards. The income shall be the gross amount earned before deducting losses, expenses, taxes, or amounts reinvested in a business entity. Income shall not include any interest in the community property of a spouse or property of a registered domestic partner.  
(Ord. 27841.)

**12.19.250 Disclosure statement.**

“Disclosure statement” means the report specified in Section 12.19.320 of this chapter.  
(Ord. 27841.)

**12.19.260 Elected official.**

“Elected official” means any of the members of the city council including the mayor who held his or her office during any portion of a reporting period.  
(Ord. 27841.)

**12.19.270 Filing date.**

“Filing date” means the fifteenth day of the month following the last day of the reporting period. If the filing date is a weekend day or a holiday, the filing date shall be the next day on which the city clerk’s office is open to conduct business.  
(Ord. 27841.)

**12.19.280 Reporting period.**

“Reporting period” means each calendar quarter, except that the first reporting period under this chapter shall be the month of September 2006.  
(Ord. 27841.)

**12.19.290 Reporting year.**

“Reporting year” means the twelve calendar months of each year except that the first reporting year shall commence on September 1, 2006 and shall conclude on December 31, 2006. Each reporting year thereafter shall commence on January 1 and shall conclude on December 31.  
(Ord. 27841.)

**Part 3****DISCLOSURE, REPORTING REQUIREMENTS****Sections:****12.19.300 Disclosure requirement****12.19.310 Filing officer.****12.19.320 Reporting requirements.****12.19.330 Enforcement.****12.19.300 Disclosure requirement.**

Each elected official shall file the disclosure statement required in Section 12.19.320 on a quarterly basis.  
(Ord. 27841.)

**12.19.310 Filing officer.**

The city clerk shall be the filing officer for the disclosure statement and will be responsible for the preparation of the forms and explanatory materials.  
(Ord. 27841.)

**12.19.320 Reporting requirements.**

- A. Each elected official shall file each quarter a disclosure statement that includes the information specified in this section with the filing officer. The disclosure statements filed pursuant to this chapter shall be public records.
- B. Each quarterly disclosure statement shall include the following information:
  1. Name of the elected official;
  2. The reporting period;
  3. Number of hours during the reporting period that the elected official has rendered services unrelated to his or her duties of office for which he or she has earned income;
  4. Identification of the business entity, governmental agency, or trust; brief description of the nature of the services; and, if applicable, identification of the business position the elected official held with the business entity, and if applicable, the position with the governmental agency or trust;
  5. Identification of the amount of income earned in the reporting period from each business entity, governmental agency, or trust in the following ranges: (a) less than five hundred dollars (\$500); (b) at least five hundred dollars (\$500) but did not exceed

- one thousand dollars (\$1,000); (c) greater than one thousand dollars (\$1,000) but did not exceed ten thousand dollars (\$10,000); (d) greater than ten thousand dollars (\$10,000) but did not exceed one hundred thousand dollars (\$100,000); or (e) greater than one hundred thousand dollars (\$100,000);
6. Each business entity with whom the elected official has a business position, or if applicable, each governmental agency or trust with whom the elected official has a position, and has earned five hundred dollars (\$500) or more in income for services rendered. If the income earned is less than five hundred dollars (\$500) in any reporting period but subsequently aggregates to or exceeds five hundred dollars (\$500) within the reporting year, the elected official shall list the name of the business entity, governmental agency, or trust in the disclosure statement for the reporting period when the total income aggregates to or exceeds five hundred dollars (\$500), and for each subsequent reporting period of that reporting year;
  7. Each source of income to the business entity with whom the elected official has a business position if the elected official's pro rata share of gross receipts to the business entity is five thousand dollars (\$5,000) or more. If the income received is less than five thousand dollars (\$5,000) in any reporting period but subsequently aggregates to or exceeds five thousand dollars (\$5,000) within the reporting year, the elected official shall list the name of the source of income in the disclosure statement for the reporting period when the total income aggregates to or exceeds five thousand dollars (\$5,000), and for each subsequent reporting period of that reporting year. The reporting requirement of this section is not intended to require the disclosure of the identity of a single source of income if such disclosure would violate federal or state law; and
  8. If identification of a single source of income under subsection 7. would violate a legally recognized privilege or privacy interest under federal or California law, the elected official shall file, in a separate document, with respect to each undisclosed person, the basis for assertion of the privilege or privacy interest and, as specifically as possible without defeating the privilege or privacy interest, facts which demonstrate why the privilege or privacy interest is applicable. The elected official shall also state, with respect to each undisclosed source of income, that to the best of the elected official's knowledge that he or she will not make, participate in making, or in any way attempt to use an official position to influence a governmental decision if doing so would be a violation of the Political Reform Act of 1974, Government Code Section 81000, et seq., as amended.
- C. The elected official shall sign and date the disclosure statement under penalty of perjury.
  - D. The elected official shall file each disclosure statement with the filing officer no later than the filing date regardless of whether the elected official holds his or her office as of the filing date.
- (Ord. 27841.)

#### **12.19.330 Enforcement.**

Enforcement of this chapter shall be through the San José elections commission pursuant to the procedures set forth in Chapter 12.04, as amended. (Ord. 27841.)

### **Chapter 12.20**

#### **NEPOTISM AND CONSENSUAL PERSONAL RELATIONSHIPS**

##### **Parts:**

- 1 Purpose and Scope of Application**
- 2 Definitions**
- 3 Prohibition - Nepotism**
- 4 Consensual Personal Relationships**
- 5 Enforcement**

**Part 1****PURPOSE AND SCOPE OF APPLICATION****Sections:****12.20.100 Purpose.****12.20.110 Scope of application.****12.20.100 Purpose.**

The purpose of this chapter is to mitigate against actual or perceived favoritism, bias, and potential conflicts of interest created from the hiring, appointment or supervision by a public official of his or her relatives and from consensual personal relationships between a public official and subordinates in the workplace.

(Ord. 28204.)

**12.20.110 Scope of application.**

This chapter shall apply to the mayor and city council.

(Ord. 28204.)

**Part 2****DEFINITIONS****Sections:****12.20.200 Definitions.****12.20.210 Consensual personal relationship.****12.20.220 Immediate family members.****12.20.230 Public official.****12.20.240 Supervisor.****12.20.200 Definitions.**

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 28204.)

**12.20.210 Consensual personal relationship.**

A consensual personal relationship means a consensual sexual or romantic relationship between an employee and a public official who is in a position of authority and supervision over the employee. This can include direct or indirect reporting relationships where the public official is in a higher level position within the same chain of command as the employee or subordinate.

(Ord. 28204.)

**12.20.220 Immediate family members.**

“Immediate family members” include the following:

- A. By blood: Parent, child, grandparent, grandchild, brother, sister, nieces, nephews, uncles, aunts, great grandchildren, or great grandparents.
- B. By marriage: Husband, wife, stepparent, stepchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, half sister, or half-brother.
- C. By law: Guardianship relationships and adoptive parent/child relationships.
- D. Domestic partner: Individuals registered with the human resources department and/or the state of California.

(Ord. 28204.)

**12.20.230 Public official.**

“Public official” means any of the members of the city council including the mayor.

(Ord. 28204.)

**12.20.240 Supervisor.**

“Supervisor” shall mean a public official having the authority to hire, terminate, transfer, lay off, reward, evaluate, discipline, or assign work to and direct other employees, or to effectively recommend such action if the exercise of such authority requires independent judgment.

(Ord. 28204.)

**Part 3****PROHIBITION - NEPOTISM****Sections:****12.20.300 Hiring and employment.****12.20.310 Supervision.****12.20.300 Hiring and employment.**

No public official shall appoint, employ or participate in a hiring or employment decision involving any person who is an immediate family member nor use his or her position to influence another city or redevelopment agency official or employee regarding a hiring or employment decision involving a member of the public official’s immediate family.

(Ord. 28204.)

**12.20.310 Supervision.**

No public official shall directly or indirectly supervise an immediate family member. This prohibition applies even in situations where the employment relationship was established or formed before a marriage.

(Ord. 28204.)

**Part 4****CONSENSUAL PERSONAL RELATIONSHIPS****Sections:****12.20.400 Responsibility.****12.20.400 Responsibility.**

Where a consensual personal relationship exists, the public official will bear the primary burden of accountability, and must ensure that he or she does not exercise any supervisory or evaluative function related to the employee or subordinate. In such a case, the public official has the responsibility to ensure that the employee is provided alternative employment arrangements outside of the public official's chain of command.

(Ord. 28204.)

**Part 5****ENFORCEMENT****Sections:****12.20.500 Complaints.****12.20.510 Review and investigation of complaints.****12.20.500 Complaints.**

A. Complaints alleging a violation of this chapter by the mayor may be made to the city attorney. Complaints alleging a violation by a member of the mayor's staff may be made to the mayor or city attorney in accordance with the city's nepotism policy, and discrimination and harassment policy which apply to city employees.

B. Complaints alleging a violation of this chapter by a councilmember may be made to the mayor or city attorney. Complaints alleging a violation by a member of a councilmember's staff may be made to the councilmember or the city attorney in accordance with the city's nepotism policy, and discrimination and harassment policy which apply to city employees.

C. Complaints alleging a violation of this chapter by a city council appointee may be made to the mayor in accordance with the city's nepotism policy, and discrimination and harassment policy which apply to council appointees.

(Ord. 28204.)

**12.20.510 Review and investigation of complaints.**

Complaints alleging a violation of this chapter shall not be subject to review and investigation by the San José elections commission.

(Ord. 28204.)